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2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Case No. 05-44481

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6 In the Matter of:

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8 DELPHI CORPORATION, ET AL.

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10 Debtors.

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13

14 United States Bankruptcy Court

15 One Bowling Green

16 New York, New York

17

18 January 18, 2008

19 2:29 PM

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21 B E F O R E:

22 HON. ROBERT D. DRAIN

23 U.S. BANKRUPTCY JUDGE

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2 HEARING re Bank of America Motion for Entry of Order
3 Temporarily Allowing Claims for Voting on Plan Pursuant to Fed.
4 R. Bankr. P. 3018(a)

5

6 HEARING re Motion of Technology Properties Ltd. for Entry of
7 Order Temporarily Allowing Claims for Voting on Plan Pursuant
8 to Fed. R. Bankr. P. 3018(a)

9

10 HEARING re Motion for Order Estimating Claims for Purposes of
11 Voting on Plan of Reorganization

12

13 HEARING re Motion of SPCP Group, LLC Pursuant to Bankruptcy
14 Rule 3018(a) Requesting Temporarily Allowance of Claims for
15 Purposes of Voting to Accept or Reject the Plan

16

17 HEARING re First Amended Joint Plan of Reorganization of Delphi
18 Corporation and Certain Affiliates, Debtors and Debtors-in-
19 Possession

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21 HEARING re Motion for Order Approving Multidistrict Litigation
22 and Insurance Settlements

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2 HEARING re Motion for Order Pursuant to 11 U.S.C. Section
3 105(a) and 502(c) Estimating or Provisionally Allowing Certain
4 Unreconciled Claims Solely for Purposes of Administration of
5 Discount Rights Offering

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1 P R O C E E D I N G S

2 THE COURT: Okay. It actually worked out so that you
3 all have my uninterrupted attention now for the rest of the
4 day. So we're back on the record in Delphi, and again, Mr.
5 Naylor, you're still under oath.

6 MR. BUTLER: Thanks, Judge.

7 THE COURT: Okay.

8 BY MR. BUTLER:

9 Q. Mr. Naylor, during your cross examination, you were
10 asked by the UAW about how it is you became to be on the
11 Delphi board. Do you recall that -- those questions and your
12 answers?

13 A. Yes.

14 Q. All right. In your own words, would you explain to
15 the Court how it is you were -- you came to be on the Delphi
16 board, how that recruitment process occurred?

17 A. Yes. There was a search company, Egon Zender, I
18 believe who -- part of their business is board seats, and they
19 approached me. It was the end -- the fourth quarter of 2004.
20 I don't remember exactly when, about a seat on a board and
21 through a couple discussions, they finally revealed it was
22 Delphi.

23 And then I had interviews with first David Farr, who
24 is the head of the governance committee, and then John Opie who
25 is the lead independent director, about joining the Board, and

1 I met with a couple of other people in Delphi, one of which was
2 Mr. O'Neil. I met with the head -- the lad attorney in the
3 company at the time. I think I had a conversation with Mr.
4 Battenberg, but the real interviewing was with Mr. Opie and Mr.
5 Farr.

6 Q. But the impetus of all these discussions was a recall
7 you received from the search company; is that correct?

8 A. I'm sorry.

9 Q. The impetus of all these discussions was a call you
10 received from the search company; is that correct?

11 A. Yes. That was the beginning.

12 MR. DECHIARA: Objection. Form, leading.

13 THE COURT: Sustained.

14 Q. During your cross examination, Mr. Naylor, you were
15 asked a series of questions about the peer groups that the
16 compensation committee had looked at over a period of time. Do
17 you recall those questions and your answers to them??

18 A. Yes.

19 Q. We have -- could you put on the screen, please,
20 Exhibit 264 and Exhibit 13 of that? In your earlier testimony,
21 Mr. Naylor, you were asked questions about, and testified about
22 the excluded companies. Do you see those companies at the
23 bottom of the chart?

24 A. Yes.

25 Q. Did you participate in any discussions regarding how

1 those companies -- how those companies should have been
2 excluded from the peer group?

3 A. Yes.

4 Q. Would you tell the Court in your own words what those
5 discussions were?

6 A. Well, we were in the habit of periodically looking at
7 this peer group companies, recognizing it is the starting point
8 for a lot of the senior executive compensation. So we were
9 periodically questioning whether we had the appropriate peer
10 group from which to index those studies from.

11 So in this particular case, it was apparent that some
12 of these companies were significantly larger than Delphi, and
13 it appeared that we had, in our view at the time, too many
14 companies outside the industry.

15 We didn't want exclusively automotive industry
16 companies because that didn't seem appropriate, nor is that the
17 practice elsewhere, as far as I know, but it looked like it was
18 too heavily weighted toward very large companies weighed beyond
19 the size of Delphi, and too many companies outside the
20 automotive industry.

21 Q. And just from terms of sequence, you had those
22 discussions and then this proposed new peer group came back to
23 you; is that correct?

24 A. Yes.

25 Q. And did you have any discussions about this peer

1 group?

2 A. Yes. We did then and later on this was further
3 reduced, per my testimony, to take off again some companies
4 that were at the high end. As it looked like the Delphi
5 prospective revenue was going to be lower than it had been in
6 the past, after emergence and after the transformation.

7 We took a look at this peer group companies and
8 decided that, well, we need to bring it closer to what we think
9 the Delphi revenue is going to be as far as the medium is
10 concerned. So I think we went from about twenty-three six --
11 23.6 billion to 21 billion in the next iteration of looking at
12 these peer companies.

13 Q. And would you pull up Exhibit 66 and Exhibit 1, Page
14 29 to that, please, on the screen? I'm sorry. I'm looking for
15 the peer -- go back to the -- maybe -- it's Exhibit 1, I think,
16 to this. It's the peer groups.

17 MR. DECHIARA: Page 33.

18 MR. BUTLER: And could you blow that up, please?

19 Q. Is this the peer group that the compensation
20 committee approved at the conclusion of its deliberation?

21 A. Yes.

22 Q. Do you have a view, as chairman of the compensation
23 committee, whether this is a reasonable or unreasonable peer
24 group?

25 A. Based on what I know about peer group selection,

1 before I joined Delphi, because the company I worked for,
2 Dupont, does the same type of comparisons with peer group
3 companies where things, including compensation, but not just
4 compensation, and the advice that we got from Watson Wyatt,
5 indicated that we had, you know, about the right mix of
6 industry, revenue, geographic reach, representative companies
7 in some of the industries where we compete for talent, which go
8 beyond the automotive industry.

9 So it's probably never perfect, but this looked to be
10 a reasonable representation from all of those different
11 standpoints, of a group of companies with which we should
12 compare ourselves.

13 Q. Throwing out a Mr. O'Neil's base salary, you were
14 asked a series of questions on cross examination about Mr.
15 O'Neil's salary, and do you recall those questions and the
16 answers you gave?

17 A. Yes.

18 Q. In your own words, would you please explain to the
19 Court why the compensation committee chose at the end of the
20 day to keep Mr. O'Neil's salary at 1.5 million dollars?

21 A. Well, it became apparent, as we went into the latter
22 part of 2007, that -- and this was as a result of conversations
23 with the plan investors primarily, that Mr. O'Neil, the CEO's
24 compensation, including base salary, was primarily going to be
25 the subject of a negotiation or discussion between the plan

1 investors and Mr. O'Neil.

2 So the compensation committee offered its
3 perspectives, but at the end of the day, this was an agreement,
4 the employee agreement between Mr. O'Neil and Appaloosa, who
5 represented the plan investors, as to what his compensation
6 should be. So at that point the compensation committee took a
7 back seat recognizing that this was prospective compensation
8 for Mr. O'Neil that would start after this compensation
9 committee had completed its work.

10 Q. Was the compensation committee ever called upon to
11 approve the results of -- or the products of -- product of the
12 negotiations between Mr. O'Neil and the plan investors?

13 A. Yes.

14 Q. Did the compensation committee take action with
15 respect to that contract?

16 A. Yes, we approved it.

17 Q. When you approved it, did you -- before you approved
18 it, did you review it?

19 A. Yes.

20 Q. Did you reach a conclusion about whether that
21 contract was reasonable or unreasonable, taken as a whole?

22 A. Yes. We thought that, you know, there may be parts
23 of it, perhaps the base salary that were at the high end of
24 reasonable range, based on the benchmarking work we had done,
25 but they were not completely outside the range of compensation

1 for executives with that level of responsibility.

2 Q. Do you recall whether that contract included any
3 provisions in it regarding whether base salary could be
4 adjusted?

5 A. Yes. I don't remember exactly what they were, but
6 there was some maximum percentage. It was ten percent, or
7 something like that, by which it could be adjusted.

8 Q. Let's, if we could, put on the -- this has been
9 admitted into evidence, Exhibit 2 to that 7.08 and this is
10 Paragraph 5A of Mr. O'Neil's contract. No, that's the --
11 that's the CIC. I'm looking for the employment agreement,
12 which is the agreement before that. And I'm looking for
13 Paragraph 5A of it. Let's blow this up first. Is this -- just
14 take a look at this. Does this look like the contract. I'm
15 sorry. That's not the contract. That's the form contract.
16 I'm looking at Mr. O'Neil's contract. This would be exhibit --
17 this was filed in the supplement 7.08 on November 28th. It
18 should be Exhibit 2. It should be Exhibit 2 and it should be
19 7.8 to that exhibit and it should be Schedule number two.

20 Let's go back to supplement. Can we go to Schedule
21 1, excuse me, Schedule 1 which I think is Mr. O'Neil's
22 contract. Okay. Let's go next, please. Yeah, okay, that's
23 great, but let's go back one page. Looking at the monitor in
24 front of you, Mr. Naylor, does this appear to be the contract
25 that you reviewed on behalf of the compensation committee with

1 respect to Mr. O'Neil?

2 A. Yes.

3 Q. Looking at Paragraph 5 of that contract, this is on
4 Page 2 of 18. Can you blow up 5A, please? Read that. Does
5 that refresh your recollection?

6 A. Yes.

7 Q. Having refreshed your recollection, was your
8 provision added to Mr. O'Neil's contract regarding reductions
9 in salary?

10 A. Yes.

11 Q. And as you recall it now, what was that?

12 A. Well, it could be adjusted to as low as 1.3 million.

13 Q. Okay. Thank you. If you know, Mr. Naylor -- I want
14 to turn to AIP now. If you know, do you know whether AIP at
15 Delphi is calculated as a percentage of base salary or on some
16 other basis?

17 A. The AIP generally is not calculated as a percentage
18 of salary. It's a target set based on the peer company reviews
19 of what would constitute target for a given level of
20 responsibility.

21 Q. And are those target awards related to base salary in
22 any way?

23 A. I would say only to the extent that base salary is a
24 surrogate for level of responsibility that they carry.

25 Q. So in your cross examination you were asked the

1 question if -- if base salary went up by some percentage, then
2 AIP would go up by some percentage. Having refreshed your
3 recollection, do you still believe that to be the case?

4 A. No. That was -- that line of questioning, as I
5 recall, was indexed off of what was the minimum percentage of
6 base salary that Mr. O'Neil would get in AIP. So we were
7 really talking about that provision. I probably mistakenly
8 extrapolated that to the broader AIP program.

9 Q. But in fact -- well, let's answer the question. If
10 someone's base salary is increased, does it follow
11 automatically that they would get more incentive awards?

12 A. No.

13 Q. What would have to happen in order for their
14 incentive aware opportunities to go up?

15 A. Their incentive award opportunity to go up?

16 Q. The opportunity to go up?

17 A. Yeah. It would have to be the result of some
18 benchmarking that would indicate the peer group, or whatever
19 the survey comparison is, had gone up.

20 Q. So the independent target would have to go up?

21 A. Right. Correct.

22 Q. Turning to change -- the change of control, you were
23 asked questions during your cross examination, you gave
24 answers, as to the circumstances under which the change in
25 control might be payable. Do you recall those questions and

1 your answers to them?

2 A. Yes.

3 Q. Are you aware -- do you recall, Mr. Naylor, are there
4 any circumstances in which an employee who might otherwise be
5 entitled to change of control benefit, would not be able to
6 receive it?

7 A. Well, if they were released for cause, for sure, they
8 do not receive it. There may have been other stipulations in
9 there for cause being an unethical behavior, or something like
10 that, that they would not be entitled to the provisions.

11 Q. Let's go to exhibit -- this has been admitted into
12 evidence, Exhibit 1, plan exhibit 7.8, and go to the -- this is
13 Paragraph 5.4 of the non-compete agreement. I would ask you to
14 take a look at this paragraph which is entitled non
15 competition, and let me know when you've had a chance to look
16 at it.

17 A. Okay.

18 Q. Is your recollection refreshed about other
19 circumstances in which the -- a CIC beneficiary would not
20 receive their CIC?

21 A. There was a non compete clause such as shown here,
22 where this was the protect Delphi from an executive leaving and
23 going to work for a competitor, or engaging in competitor
24 related activities following their tenure at Delphi. So that
25 would release the CIC, or the EA agreements.

1 Q. So under the proposed CIC agreement there would be --
2 you couldn't get your CIC if you went to a competitor?

3 A. Correct.

4 MR. DECHIARA: Objection, leading.

5 THE COURT: It's already been answered. You can
6 move on.

7 Q. Mr. Naylor, one other question. Do you have a view
8 as to why a executive would view this CIC agreement as being --
9 having any benefit to him or her, if he couldn't get the
10 benefit if he went to a competitor?

11 A. Do I have a view as to why they would see --

12 Q. Let's just hypothetically. You're an executive. I'm
13 offering you this agreement.

14 A. Um-hum.

15 Q. You can't have -- you can't get anything if you go to
16 a competitor. I'm saying here's a benefit for you, Mr. O'Neil,
17 or rather Mr. Naylor. Would you view this as being beneficial
18 if you were restricted from going to competitors?

19 A. No, because I'm probably most marketable and most
20 competitive if I move to a competitor.

21 Q. And if you had this, would you -- would you view your
22 potential employment opportunities as only within the
23 automotive industry or elsewhere? What's the world you'd look
24 at as an executive?

25 A. Well, by and large, I'd view the world as the world

1 X, the automotive industry as my opportunity, and that
2 certainly restricts my marketability to find another place of
3 employment.

4 Q. I next want to go to the ten percent reductions, Mr.
5 Naylor, that were taken -- you asked questions about the DSB,
6 and the reductions that were taken in base salary, the waivers
7 that were made of the base salary during the Chapter 11 case.
8 Do you recall the questions asked and the answers you gave?

9 A. Yes.

10 Q. Do you know whether all the members of the DSB took
11 the ten percent reduction or whether only some took it?

12 A. My recollection is only some took the ten percent
13 reduction.

14 Q. Do you have a recollection of who did not take the
15 reduction?

16 A. By in large, those that did not take it were not
17 direct reports of Mr. O'Neil. That is they perhaps didn't
18 report directly to him. I know his -- he and his direct
19 reports took the ten percent. That's the only recollection I
20 have about who did and did not take the reduction.

21 Q. You were asked a series of questions about the
22 employment -- or excuse me, the emergence cash payments
23 proposed for Mr. Miller and Mr. O'Neil. Do you recall the
24 questions and the answers that you gave?

25 A. Yes.

1 Q. I'd like to put up Exhibit 2, Section 7.8, please.
2 This would be the supplement to the plan Section 7.8. Go to
3 Page 2, please, of that, that next -- and would you blow up the
4 -- go back to the last page before this now. Okay. I think
5 you can go to the next page then. Would you blow up that?
6 Would you blow up that -- just the first paragraph so people
7 can see it more easily. Would you just take a quick look at
8 this, Mr. Naylor, and let me know when you're finished?

9 A. Okay.

10 Q. Is that summary an accurate reflection insofar as you
11 recall of the deliberations of the compensation committee with
12 respect to the factors they considered in reaching these
13 decisions?

14 A. Yes.

15 Q. In your own words to the Court, could you explain the
16 factors you considered and the relative weighting you placed on
17 them as you thought about these issues?

18 A. Yes. We -- as with all the compensation, we try to
19 come at it first from a standpoint of performance base. That
20 is what aspects of performance should we attach to whatever
21 compensation recommendation we make. So when we looked at the
22 performance of Delphi during the case, several factors came
23 into light.

24 That is the length and complexity of this case, the
25 number of factors. I recall someone described it as three or

1 four dimensional chess, if I recall. This was an incredibly
2 difficult, complex, lengthy case, and that plus the fact that
3 if the chairman and the CEO did not work together in a
4 complimentary and mutually supportive fashion, there's no way
5 that we could have achieved the progress through the case.

6 So that was taken into account. We looked at and
7 asked some questions about, well, what -- how does this case
8 and the expected recoveries by the creditors, the equity
9 holders, et cetera, compare to other Chapter 11 cases. You
10 know, where does it sit in the spectrum of outcomes.

11 And what we were told, and to the best of my
12 knowledge, this is certainly at a very high percentile of
13 outcomes in terms of recovery. So of course all this was not
14 known, could not be known in October, 2005. This was the
15 performance through the case.

16 So we were taking that into account as we looked at
17 this. If the company had just gone through the case and not
18 transformed itself to emerge in a fundamentally different,
19 competitive position, that would have been a serious problem.
20 Actually quite the opposite was true.

21 We had a five part business plan, and by in large, we
22 are on schedule with every aspect of the transformation that
23 needed to occur to change the competitive position, improve the
24 competitive position of Delphi coming out.

25 So when we looked at it, we really tried to figure

1 out what are the aspects of performance that the executives had
2 a primary role to play, and how did they compare to what might
3 be considered a median outcome for a case like this, and we
4 concluded that this was significantly above the median for the
5 outcome.

6 So we tried to take a performance look at it and
7 that's the main reasons why we recommended that instead of the
8 total of eight million, we went to the 13.6 that was in the
9 recommendation.

10 Q. You said that you took it also -- would you just tell
11 me what weight if any you placed on the last factor in here,
12 what was included in this waiver of approximately 7.2 million?

13 A. I didn't mention that. I'd say that that was a
14 factor to consider, but this -- this deliberation was primarily
15 about the performance. That was just a consideration after
16 primarily considering the performance.

17 Q. You were asked some questions in your cross
18 examination about comparing the amount of money reserved in the
19 original keyset for Mr. O'Neil and Mr. Miller. Do you recall
20 those questions and your answers to them?

21 A. Yes.

22 Q. Do you recall the amount of money that was originally
23 allocated to the two of them?

24 A. Yes.

25 Q. What was that?

1 A. Eight million dollars.

2 Q. Eight million dollars. And what positions did they
3 hold at the time there were those allocations?

4 A. Chairman and CEO in the case of Mr. Miller and COO in
5 the case of Mr. O'Neil.

6 Q. And at the time that report was prepared, did the
7 office of Executive Chairman exist at Delphi?

8 A. Office of the -- no.

9 Q. And just to again do the math, if you added up the
10 amount of money that was in the original award of eight
11 million, and the amount waived by the executives during the
12 case of seven (indiscernible), that equals 15.3 million, does
13 it not?

14 A. The --

15 Q. The original allocation plus the waived amount is how
16 much, if you add them together?

17 A. Yes. If there was seven -- the waived amount was 7.3
18 or 7.4, something like that. Yes, so 15.3.

19 Q. And what was the amount again of your total award to
20 them?

21 A. 13.6.

22 Q. I'd like to put up, if we could, the Watson White
23 Report, which I think is Exhibit 90, Page 13. This has been
24 admitted into -- also admitted into evidence. This would be
25 Page 13. And could you blow up the first paragraph of that,

1 the first at present? I'd ask you to take a look at this, Mr.
2 Naylor.

3 A. Okay. So the only exception --

4 Q. Let me just ask --

5 A. Yeah, I do --

6 Q. -- the question before you answer.

7 A. Yeah.

8 Q. Does this refresh your recollection as to what
9 members of the DSB took ten percent reductions?

10 A. Yes.

11 Q. And what is the -- and after having your recollection
12 refreshed, what do you recall now about the DSB members?

13 A. The only DSB members that were excluded were those
14 hired after the Chapter 11 filing, which I believe was at least
15 two people, maybe three. I don't recall.

16 Q. Mr. Naylor, you were asked a series of questions
17 about -- in connection with the emergency equity awards, the
18 amount reserved for the executives, and the difference between
19 doing ten percent and eight percent. Do you recall those
20 questions and the answers you gave?

21 A. Yes.

22 Q. Do you recall the -- the discussions -- in those
23 questions and answers, do you recall making comparisons between
24 the percentage amounts, the percentage range, eight to ten
25 percent, and the ascribed value of those ranges based on the --

1 the change in the equity value of the company?

2 A. Yes.

3 Q. When the company filed Chapter 11, what -- if you
4 recall, what was the anticipated equity value, plan equity
5 value of the company?

6 A. I think the estimate at that time was four billion.

7 Q. And what is that today?

8 A. 7.8 billion is the number I've seen most recently.

9 Q. And to whom does that increase in value benefit among
10 all the people in this room, all the stakeholders? Who
11 benefits from that, in your view?

12 A. Well, it's probably easier to answer who does not
13 benefit from it. It's a fairly small subset. I can't think of
14 anybody who did not benefit from the increase in value of the
15 enterprise. I mean the -- it's a healthier enterprise. The
16 company's in a better shape than it was at filing, and
17 certainly that value indicates the prospects for the company
18 are healthier than they would otherwise have been --

19 Q. Did you participate in the Board of Director's final
20 approval process with respect to the plan that's before this
21 Court today for confirmation?

22 A. Could you repeat that?

23 Q. Did you participate in the Board of Director's
24 approval process for the plan of reorganization that's before
25 this Court for confirmation today?

1 A. Yes.

2 Q. As part of your view -- and did you review the
3 disclosure statement and plan, the amended disclosure statement
4 and plan, prior to the Board deliberating on it?

5 A. Yes.

6 Q. Did you vote on the approval process?

7 A. Yes.

8 Q. How did you vote?

9 A. Approve.

10 Q. Why?

11 A. Why did I vote approve? Because the -- it is time
12 for this company to emerge from the Chapter 11 proceedings.
13 The transformation has largely been completed. The enterprise
14 is in a much healthier state. We have healthy prospects for
15 the company, including future business prospects with the
16 bookings and so on.

17 And time is of the essence. I think staying in
18 Chapter 11 any longer than absolutely necessary, with the
19 provisions and the terms that were all in that disclosure
20 statement, did not make sense, and it was time to emerge.

21 And we had investors. We had the transformation
22 essentially completed, and we had financing largely put in
23 place.

24 Q. After you were -- when you were evaluating the range
25 of what set aside ought to be proposed by the company with

1 respect to this equity for executives, did you focus on the
2 eight percent versus ten percent, the absent dollar amounts
3 that are derived by those percentages, both of them or a
4 combination? Explain what was your principle focus and why?

5 A. Our principle focus was the percentage because the
6 data would indicate that that is how the benchmarking is done,
7 that's how companies in the past have decided what amount of
8 equity should be set aside for the executives.

9 So if the value of the enterprise went up, that's a
10 good thing for everyone concerned, and it is due at least in
11 part to the performance of the management team. So that's a
12 good thing, but the percentage is the real criteria.

13 Q. You were asked a series of questions about -- during
14 your cross examination about items that the executives had
15 given up. Do you recall those questions and your answers to
16 them?

17 A. Yes.

18 Q. Would you put up on the screen, please, and it's been
19 admitted into evidence, Exhibit 1 and Exhibit 8.1A to that at -
20 -- this may be -- actually, this is Exhibit 2. Excuse me. Plan
21 exhibits filed on December 28th. Exhibit 2, Exhibit 8.1A.
22 Could you just blow the title up, please?

23 That's okay. Go to the next page and blow that up,
24 please. Do you recall what this exhibit was attached to the
25 plan that you earlier testified you reviewed and approved Mr. -

1 - excuse me, Mr. Naylor?

2 A. Yes.

3 Q. And in your own words, what is this list?

4 A. This list is a list of agreements and prior
5 commitments, if you will, that we were asking all the
6 executives to relinquish, basically as a condition of
7 employment in Delphi, following the emergence.

8 Q. So, just so the record is clear, Paragraph 3 provides
9 for the termination of all CERT benefits unless continued in
10 the new program; isn't that correct?

11 MR. DECHIARA: Objection. Leading.

12 THE COURT: You can ask it -- go ahead.

13 THE WITNESS: I'm reading it here again to make
14 sure. Yes.

15 Q. So I want to keep this, but I want to jump to another
16 exhibit and come back. Exhibit 302, please, Bates label 13672.
17 So you were asked about this chart, Exhibit 302 in your direct
18 -- or in your cross examination and you were asked a series of
19 questions and answered -- made answers. Do you recall those
20 questions and answers?

21 A. Yes.

22 Q. In connection with that, the -- we now know from your
23 testimony that the CERT was rejected on the active side. Can -
24 - a couple of questions. Do you have an understanding, and
25 again, without going into the attorney client privilege, but do

1 you have an understanding as to the retirees where SERP was
2 rejected, what the likely course of action for them is as a
3 result of the rejection of their SERP agreements?

4 A. I think this is the segment that are part of the
5 claims process in the -- in the bankruptcy proceeding and the
6 plan. So they get rolled into all the other claimants and a
7 decision will be made through that process.

8 Q. And do you have an understanding under the plan as to
9 what allowed claims are going to be received in terms of value?

10 A. The last number I heard was somewhere around 1.4
11 billion.

12 Q. That's the number of claims, but I'm just asking
13 about, if I'm a claimant and my claim is allowed, am I going to
14 get two cents on my claim -- if you know, two cents on my
15 claim, ten cents par plus accrued plan value, what would it be?
16 If you know. We can put the documents on.

17 MR. DECHIARA: Objection to the inflection, Your
18 Honor.

19 THE WITNESS: Again. I'm not sure I have the
20 terminology straight, but I believe that if you're talking
21 about the recovery by the creditors, it is par plus accrued, or
22 it's at least par and I think partially plus accrued, the last
23 I recall.

24 Q. All right. In terms of -- did the compensation
25 committee take into consideration that the likely recoveries

1 and outcomes with respect to retirees for whom the SERP was
2 being terminated, when it -- when it evaluated, whether to
3 continue the SERP for actives?

4 A. Could you repeat that, please?

5 Q. Did you decide to continue the SERP for actives when
6 you froze -- you testified you froze it and replaced it and all
7 that, but I'm saying the basis SERP benefit you continued for
8 actives, correct?

9 A. Yes.

10 Q. All right. When you made that decision, did you
11 consider whether -- in making that decision, what the likely
12 recovery to retirees would be, even though you terminated the
13 SERP for them?

14 MR. DECHIARA: Objection, Your Honor. I
15 believe, as I understand the question, I don't believe it's
16 factually accurate. I don't believe the SERP has been
17 terminated for employees.

18 MR. KENNEDY: He said terminated for retirees.

19 THE COURT: Did you compare the treatment of
20 retirees in light of the rejection of the SERP with the
21 decision whether to continue benefits comparable to the SERP
22 for active employees?

23 THE WITNESS: We had so many conversations on
24 this subject. I believe it was considered. I don't believe it
25 was a major consideration in those deliberations.

1 Q. In your own words to the Court, what were the major
2 considerations in continuing the SERP?

3 A. Continuing the --

4 Q. The SERP for actives?

5 A. For actives, the DC?

6 Q. Correct.

7 A. SERP? Well, to -- again, recognizing that our plan
8 was to have a going concern, an enterprise following emergence.
9 When we looked at practice in industry in general, there is a
10 move toward the defined contribution plans now, and so that's
11 what we -- we instituted, again, to be at market, so to speak
12 in that area of compensation.

13 Q. Let's go back to Exhibit 8.1A and blow it up again,
14 please. As to Paragraph 1, did you have any understanding as
15 the chairman of the compensation committee, what was being
16 rejected by the debtors under the plan with respect to
17 Paragraph 1?

18 A. Yes.

19 Q. And in your words, what's your understanding?

20 A. Well, my understanding was that the previous change
21 in control agreements -- I guess we're still operating under
22 those at this point -- were examined and were judged to be
23 above market in terms of the payout that would be awarded
24 executives if there was a change in control, and I think there
25 was a number -- it was in excess of 200 million dollars, or

1 something like that, that would be the cost of the current
2 change in control agreements, and we just -- we could not in
3 good conscious allow that to continue and that's when we
4 started talking about the -- making rejection of those
5 agreements, termination of those agreements as a condition of
6 employment and new change in control agreements being
7 instituted at emergence.

8 Q. And what -- did you reach a decision on those -- that
9 subject matter as a compensation plea?

10 A. Yes. We did make it a condition of employment and
11 the new Delphi after emergence, that the executives reject and
12 relinquish their claim under that previous change in control
13 regime.

14 Q. Can we put Exhibit 1, Section 7.8, which is the claim
15 version. Could you blow it up, please? If you read the plan
16 revision 7.8, does this include the direction of the
17 compensation committee that you just described?

18 A. Yes.

19 Q. One last set of questions, Mr. Naylor, and then I'll
20 be concluded, and that has to do with the issue of second
21 opinion or third party review, or input with respect to the
22 management compensation program. You were asked a series of
23 questions about that topic on cross examination and gave
24 various answers. Do you recall those questions and answers?

25 A. Yes.

1 Q. Could you keep that same up, please, just as I had
2 it, please? Thank you. Was there any -- during the course of
3 this process, were there any -- was there any other opinions or
4 participation by third parties in the review and design of this
5 program, just before the -- that's included in the plan?

6 MR. DECHIARA: Objection. It's beyond the scope
7 of the cross examination.

8 MR. BUTLER: No, you asked about second
9 opinions.

10 THE COURT: No, I'll overrule that. It's
11 consistent with second opinion, so you can answer that
12 question.

13 THE WITNESS: Yeah, I'm --

14 Q. If you recall, Mr. Naylor, who else reviewed the
15 plan?

16 A. Oh. Again, the plan in its entirety was reviewed by
17 the statutory committees and the plan investors. So there were
18 multiple reviews of this plan, and there were a few adjustments
19 made through those reviews. What you see here was the result
20 of all those reviews, including the compensation committee.

21 Q. And after the compensation committee received input
22 from the plan investors, did it make adjustments to the
23 compensation program?

24 A. Yes.

25 Q. And did it reach agreement with the plan investors

1 with respect to the compensation program?

2 A. Yes.

3 Q. With respect to the emergence awards and emergence
4 equity, did the compensation committee receive input from the
5 creditor's committee?

6 A. Yes.

7 Q. And did the compensation committee make adjustments
8 to that plan based on that input?

9 A. Yes.

10 Q. And at the end of the day, did the company reach an
11 understanding with the creditor's committee whereby if you made
12 the changes, they would not exercise any rights to object under
13 these provisions?

14 A. Correct.

15 MR. BUTLER: I have no further questions, Your
16 Honor.

17 THE COURT: Okay. I have a couple questions,
18 Mr. Naylor, but before that, you can shut that blind back
19 there, which I believe -- I'm sure it's making it kind of hot
20 in the corner. Mr. Naylor, you testified, I think, that with
21 regard to Mr. O'Neil's salary on emergence and going forward,
22 that that was in the compensation committees view a perspective
23 matter and therefore something that was first and foremost a
24 negotiation between Mr. O'Neil and the plan investors. Is that
25 --

1 THE WITNESS: Correct.

2 THE COURT: -- how you remember your testimony?

3 Am I right, though, that with regard to Mr. O'Neil's emergence
4 bonus, that was not covered by that -- by that question, and
5 that was something that was instead, as per your later
6 testimony, something that the compensation committee and the
7 Board primarily focused on as opposed to plan investors?

8 THE WITNESS: Yeah, the emergence cash award was
9 first put forward to the plan investors by the compensation
10 committee. In the course of their discussions with Mr. O'Neil
11 that went on for a month or more, they ultimately agreed to
12 that 5.3 million dollars.

13 THE COURT: And that was part of this 7.8
14 provision? That was consistent with the provision of 7.8 that
15 Mr. Butler just took you through, that's still up on the
16 screen, where the -- both the plan investors and the creditor's
17 committee have to have agreement on those types of payments?

18 THE WITNESS: Yes. Right. I believe the only -
19 - the only part that perhaps has not been discussed with the --
20 with the statutory committees is Mr. Miller's award. Again,
21 I'm trying to remember the sequence of events here. I'm not
22 sure.

23 THE COURT: Okay. Then you also discussed the
24 factors that the compensation committee took into account when
25 considering the emergence bonus awards for Mr. Miller and Mr.

1 O'Neil. You remember that?

2 THE WITNESS: Yes.

3 THE COURT: And you mentioned first and foremost
4 the committee looked at the debtor's performance, to some
5 extent the foregone compensation during the course of the case,
6 and then you also had been given information by Watson and
7 Wyatt on competitive benchmarking?

8 THE WITNESS: Yes.

9 THE COURT: Am I right that this -- these two
10 bonuses therefore were not looked at as surrogates for foregone
11 long term investment opportunity -- the long term opportunity
12 that I gather you -- you've testified that the other officers
13 and executives, emergence bonuses, is meant in part to reflect?

14 THE WITNESS: Right.

15 THE COURT: Is that right?

16 THE WITNESS: You are correct in that the -- one
17 consideration was the foregone LTI opportunities during the
18 case, but it was really not the primary consideration for those
19 two individuals.

20 THE COURT: Okay. And when you talk about the
21 waiver of approximately 7.3, 7.4 million, I want to make sure I
22 understand the components of that. As far as Mr. Miller is
23 concerned, that's the waiver of his salary; correct?

24 THE WITNESS: Correct.

25 THE COURT: Because he took a dollar a year for

1 the --

2 THE WITNESS: Yes.

3 THE COURT: -- course of the case. Did it
4 involve anything else or was it --

5 THE WITNESS: Mr. O'Neil --

6 THE COURT: No, I'm talking about Mr. Miller
7 first.

8 THE WITNESS: Oh, Mr. Miller?

9 THE COURT: Yeah.

10 THE WITNESS: That was his salary and the -- if
11 he was participating in the AIP, the short term incentive
12 during that period, it included that potential.

13 THE COURT: Okay. And now for Mr. Miller, was
14 it the same thing or was that just -- was that the 20 percent?

15 THE WITNESS: For Mr. O'Neil?

16 THE COURT: I'm sorry. For Mr. O'Neil.

17 THE WITNESS: For Mr. O'Neil it was that twenty
18 percent of his salary. I believe that was the only -- it was
19 530,000, I believe, foregone through the case. That's just the
20 salary.

21 THE COURT: Okay. And I want to make sure I
22 understand this. There's been testimony about Watson Wyatt's
23 view, which then I gather the compensation committee was
24 convinced of, that the DSB members were being compensated in
25 the salary portion of their compensation during the Chapter 11

1 case, above the median. Do you remember that testimony?

2 THE WITNESS: Yes, I remember that testimony.

3 THE COURT: And then there was the determination
4 of ten of them to reduce their salary by ten percent.

5 THE WITNESS: Well, I think we just clarified
6 through the cross examination by Mr. Butler that there were --
7 there's 21 members of the DSB. Again, I don't remember how
8 many people exactly were hired after the Chapter 11 filing. It
9 was at least two, maybe three, with the exception of those two
10 or three, the other 18 or 19 people took the ten percent
11 reduction -- voluntary reduction effective January 1, '06.

12 THE COURT: Okay. And then Mr. O'Neil took a 20
13 percent reduction.

14 THE WITNESS: Correct.

15 THE COURT: Was it the view of Watson Wyatt and
16 the compensation committee that Mr. O'Neil's salary standing
17 alone, if you just look at the salary, was also above the
18 median? Was that a basis or a rationale for the twenty percent
19 reduction?

20 THE WITNESS: No. That was purely -- let's call
21 it an act of solidarity with Mr. Miller's reduction to one
22 dollar in an effort to try and move the case along,
23 particularly with respect to the labor negotiations.

24 THE COURT: Okay. Okay. The last question I
25 had is -- no, that is the last question I had. Thank you.

1 EXAMINATION BY MR. KENNEDY:

2 Q. Mr. Naylor, I just wanted to address again briefly
3 this issue of emergence cash to Mr. Miller and Mr. O'Neil. The
4 amount that as given up by Mr. Miller, you computed at 6.75
5 million; is that correct, sir?

6 A. That's the number I recall, yes.

7 Q. And in computing the amount that Mr. Miller gave up,
8 how did you factor in the three million dollar bonus that he
9 received in June of 2005?

10 A. The period we looked at was January, '06 to December,
11 '07 and that three million dollars preceded that period.

12 Q. So the three million dollar bonus that he received
13 didn't figure in any way in your determination of how much of a
14 emergence bonus he should receive?

15 A. We were aware of it but, no, that was for a different
16 purpose and time period.

17 Q. Now, during the period of time in 2005 when Mr.
18 Miller was drawing a salary, I believe he was drawing a salary
19 of 1.5 million?

20 A. In '05?

21 Q. Yes, at the rate of 1.5 million?

22 A. Yes, I believe so, right.

23 Q. And assuming that salary would have stayed constant
24 in '06 and '07 he would have -- or did fail to receive three
25 million, one a half million for each year. Is the remaining

1 three and three quarter million that you computed him as having
2 given up all of it AIP?

3 A. Yes. We did not factor in LTI, at least the best of
4 my recollection, LTI was not part of the calculation.

5 Q. Now, Mr. O'Neil continued to receive AIP rather
6 during the '06 and '07 years; correct?

7 A. Correct.

8 Q. So that the amount that Mr. O'Neil did not receive
9 during '06 and '07 is just a half a million dollars; correct?

10 A. Correct.

11 Q. Now, you've, as I understand your testimony,
12 indicated that the 13.6 million was primarily about performance
13 in taking the company through the Chapter 11 and its emergence,
14 correct?

15 A. Yes.

16 Q. And one of the key criteria you used in making that
17 determination was to measure the recoveries by debtors in the
18 Delphi case as opposed to other cases?

19 A. Yes.

20 Q. And in that making that determination that the 13.6
21 million was appropriate, did you assume that the creditors are
22 going to receive par plus accrued?

23 A. We -- this was evolving and changing somewhat through
24 the period of time we were making this determination, so at one
25 time, it was par plus accrued, maybe earlier in the case and

1 then I think there was some relatively minor changes to that,
2 but what remained was that the recoveries by creditors and
3 equity was based on the -- our assessment above median by more
4 than a little bit.

5 Q. And what are you assuming the recoveries for
6 creditors are going to be now, in making that determination?

7 A. I don't know exactly what it is. I think it's par.
8 It may not be par plus accrued, but it's at least par.

9 Q. And are you referring to the amount that's going to
10 be paid under plan?

11 A. Yes.

12 Q. You're talking about what I'll call the plan presumed
13 recovery. You think it's par at this point?

14 A. Yes.

15 Q. Okay. In any event, you're not -- in making that
16 determination that the recoveries have been above the median.
17 You're not looking at the market value in which the securities
18 are trading today as we sit here, or the bonds I guess I should
19 say, are trading today?

20 A. No. We -- no.

21 Q. Did you consider putting target emergence values as a
22 criteria for awarding either the emergence cash in general or
23 the emergence cash to Miller and O'Neil?

24 A. Did we ever consider that? No, I don't believe so.
25 What we decided to do was to asses their performance as we got

1 close to the end of the case, as opposed to setting targets.

2 Q. Well, they're being paid all in cash where the
3 creditors are essentially being paid in stock, correct?

4 A. Yes. Their emergence award is --

5 Q. Their emergence cash is the cash --

6 A. The cash award is cash.

7 Q. -- obviously?

8 A. Right.

9 Q. All right. Now, I want to talk to you a little bit
10 about this ten percent of reduction in salaries. I gather in
11 the exchange with counsel, you've clarified in your own mind
12 that most of the members of the DSB did give up ten percent of
13 their salary, correct?

14 A. Correct.

15 Q. Okay. Could we bring up Exhibit 2 to Mr. Bubnovich
16 deposition, which I think is 265? Now, were the -- were the
17 DSB members who gave up salary paid back any of that salary by
18 the company?

19 A. Not that I'm aware of.

20 Q. Okay. Could we bring up Exhibit 2 to the -- not to
21 his declaration. To the exhibit, or to the deposition. I'm
22 sorry if I said declaration. I apologize. That's Exhibit 265.
23 I'm sorry. Correct me. It's Exhibit 2 to the declaration.
24 Yeah, Page 13. Okay, could you blow up the one, two, three,
25 fourth paragraph as Mr. Butler has had you do several times?

1 The ones that begins the amount of the shortfall. Okay, do you
2 have that in front of you, Mr. Naylor?

3 A. Yes.

4 Q. You'll note that it says, quote, the amount of the
5 shortfall between the proposed LTI equity opportunities and
6 median opportunity, plus the amount of the permanent reduction
7 in salaries, as well as certain downward adjustments were
8 estimated at four million. This shortfall was the basis to the
9 committee to adjust upward the LTI opportunities for certain
10 DSB executives, et cetera.

11 Does that refresh your recollection on whether the
12 DSB executives who had a ten percent reduction in compensation
13 were paid back that money in some way by the company?

14 A. Nobody has been paid back anything.

15 Q. Okay. Well, what is the phrase plus the amount of
16 permanent reduction in salaries refer to as part of the basis
17 to adjust upward the LTI?

18 A. As I recall, there are a number of executives in this
19 group whose responsibilities actually increased as a result of
20 reorganization and the transformation of the company. So for
21 them, they not only took a ten percent reduction, they had an
22 increase in responsibility which widened the gap, if you will,
23 between what they should be paid and what they were being paid,
24 and that was going to be reconciled after emergence.

25 Q. Is it your contention, Mr. Naylor, that that

1 paragraph says that, what you've just told us?

2 A. That's my recollection of the basis for the salary
3 part of that four million.

4 Q. Well, which DSB executives, you can describe them by
5 category and not by name if you'd like, that were adjusted
6 upward in the second sentence of that paragraph?

7 A. I certainly know them by name and this -- I believe
8 the compensation committee felt that the CEO was in the best
9 position to decide where responsibilities had changed, who took
10 salary cuts, and decide where that four million dollars was
11 best placed.

12 So our reconcile there was that that was going to be
13 at the discretion of the CEO to decide how to allocate that
14 four million dollars.

15 Q. And it's your understanding that the phrase, the
16 permanent reduction in salaries is not referring generally to
17 the ten percent that was given up by the DSB members?

18 A. My understanding was that was a consideration, but
19 this was not attempt to across the board true it up, if you
20 will.

21 Q. All right. How many of the DSB members were trued up
22 on the amount they had suffered as a reduction in salaries
23 through this four million dollars?

24 A. I don't recall.

25 Q. Okay.

1 THE COURT: Well, was there a true up for
2 anyone, unless they assumed new responsibility?

3 THE WITNESS: I don't know.

4 THE COURT: Okay.

5 Q. In fact, you're not certain that it was only people
6 who assumed new responsibilities that received the true up, are
7 you?

8 A. That was my understanding. I can't be certain
9 because I don't have the numbers and what Mr. O'Neil decided.

10 Q. You talked about the increase in value from an
11 assumed four billion in October, 2005 plan to the current
12 assumed plan value of 7.8 billion. How much of that was
13 attributable to union members consenting to a reduction of
14 their jobs and their compensation in benefits?

15 A. I don't have that calculation, so I don't know.

16 Q. Do you have any sense of whether it's a major
17 portion, small portion, majority, less?

18 A. Well, my sense is that recognizing that the union
19 based employees compensation was approximately two or three X
20 market prior to filing that reductions that are now down to --
21 again, my understanding is they're still above market, that
22 that was a material piece.

23 MR. DECHIARA: Objection, move to strike that
24 testimony. Lack of foundation. The witness just testified as
25 to the market level of what the union members' salary were.

1 There's no foundation that this witness has either expertise as
2 a compensation expert, nor that he studied any expert reports
3 or consulted with any experts as to the market level of the
4 union employees.

5 THE COURT: Well, he was just asked what his
6 understanding was of the -- of the amount of the increase in
7 the equity value attributed to the union, and so I'll take his
8 answer as far as his understanding was concerned.

9 MR. KENNEDY: All right. I have no further
10 questions, Your Honor.

11 THE COURT: Okay.

12 EXAMINATION BY MR. DECHIARA:

13 Q. Mr. Naylor, what was Mr. O'Neil's base salary during
14 the course of the Chapter 11 case?

15 A. 1.2 million, I believe.

16 Q. Do you know the dollar value of the twenty percent
17 reduction that he took?

18 A. From January 1, '06 to December 31, '07 it was
19 \$530,000.

20 Q. And now as a -- he took that voluntarily?

21 A. Yes.

22 Q. Okay. Were you aware, or are you aware of any
23 discussions he had with the compensation committee that he
24 would get that money back?

25 A. There were never any discussions I was a party to

1 about that subject.

2 Q. Okay. You were asked during redirect by counsel a
3 couple of questions about Mr. O'Neil's proposed employment
4 agreement going forward. If I could direct you to Page 2 of
5 that proposed employment agreement, which is attached as
6 Schedule 1 to Naylor Deposition Exhibit 2, it's the supplement
7 to management compensation (indiscernible) document. One more
8 page. Another page. Next page. Okay. Slow up. Okay. Isn't
9 it true that Mr. O'Neil could only get a salary reduction in
10 the event that there was an across the board salary reduction
11 for similarly affecting other company executives?

12 A. Yes.

13 Q. And then can you pull up the paragraph on the side B.
14 And isn't it true that the minimum of AIP bonus that Mr. O'Neil
15 would get would be based as a percentage of his base salary?

16 A. Yeah, that's how the floor was --

17 Q. Right. So if his base salary were bigger, the floor
18 of his AIP bonus would go up, too, correct?

19 THE COURT: Unless this is going somewhere,
20 we've already been through this.

21 MR. DECHIARA: That was my only question, Your
22 Honor.

23 THE COURT: All right.

24 Q. Okay. Just a couple more questions. You testified -
25 - well, Mr. Naylor, you're aware that there's an equivalence of

1 sacrifice clause in the agreement between UAW and GM and
2 Delphi?

3 MR. BUTLER: Objection. Not a proper -- that
4 wasn't raised on redirect.

5 THE COURT: Sustained.

6 Q. Okay. Mr. Naylor, you testified on redirect about
7 communications between the compensation committee and various
8 statutory committees concerning the proposed management
9 compensation plan. Do you recall that?

10 A. Yes.

11 Q. Okay. Did any of those other committees, or did any
12 of those committees or other entities that had those
13 communications, discuss the equivalence of sacrifice clause in
14 the UAW agreement?

15 MR. BUTLER: Objection. That's outside the
16 scope of redirect as well.

17 MR. DECHIARA: I don't think it is, Your Honor.

18 MR. BUTLER: No discuss about the equivalence
19 sacrifice on redirect.

20 MR. DECHIARA: On redirect the issue was raised
21 --

22 THE COURT: Well, you talking about 7.8?

23 MR. DECHIARA: No, Your Honor. The witness
24 testified that various groups had input into the management
25 compensation plan.

1 THE COURT: In connection with 7.8?

2 MR. DECHIARA: Okay. Maybe I stand corrected.

3 Q. Was that -- was the input from the other groups
4 limited to certain aspects of the management compensation plan
5 or was it -- did they comment generally about different
6 aspects?

7 A. They reviewed the entire plan as proposed.

8 Q. And had comments about various aspects of the plan;
9 is that correct?

10 A. Yes.

11 Q. Okay. Did any of them raise the equivalence of
12 sacrifice clause in the UAW agreement?

13 A. Not to my knowledge.

14 Q. Did the compensation committee every solicit input
15 from the UAW as to whether the UAW believed the proposed
16 management compensation plan satisfied the equivalence of
17 sacrifice requirement?

18 MR. BUTLER: Objection. Outside of the scope of
19 redirect.

20 THE COURT: I'll let him answer that.

21 THE WITNESS: No.

22 MR. DECHIARA: That's all I have on redirect.
23 Thank you.

24 THE COURT: Okay.

25 MR. BUTLER: Your Honor, I have no recross.

1 THE COURT: Okay. You can step down, Mr.
2 Naylor.

3 MR. BUTLER: Your Honor, can I just at this
4 point get a sense from the Court of how long we're going to go
5 today, and get a sense from the parties as to the length of
6 their cross --

7 THE COURT: Okay. I mean obviously I'd like to
8 finish up with the witnesses today.

9 MR. BUTLER: It is now --

10 THE COURT: How long -- I mean --

11 MR. BUTLER: I'm just trying to figure out --

12 THE COURT: How long do you think you'll be with
13 Mr. Bubnovich is next?

14 MR. BUTLER: Yeah. I just want to figure out
15 order of witnesses depending upon how long we're going.

16 MR. DECHIARA: I would think we would take an
17 equivalent length of time, in view of the technical matters. I
18 could probably make it go faster, Your Honor.

19 THE COURT: Let's try to make it go faster.

20 MR. DECHIARA: Okay. Well, I think I'll --

21 THE COURT: I mean I have his -- I have his
22 declaration, his report. I mean I think we can -- if you can
23 hone in on what you view as what's problematic with his report,
24 I think that's the way to go.

25 MR. DECHIARA: Well, then we'll speed things up.

1 THE COURT: Okay.

2 MR. DECHIARA: So I don't know.

3 MR. BUTLER: Your Honor, can I suggest -- can we
4 take a five minute recess so I can just consult with counsel
5 just about expected lengths of time and sort of how we'll
6 produce our witnesses.

7 THE COURT: Okay. That's fine.

8 MR. BUTLER: And do we have a sense from the
9 Court as to how long you're willing to go tonight.

10 THE COURT: Seven.

11 MR. BUTLER: Okay. Thank you, Judge.

12 MR. DECHIARA: Seven.

13 THE COURT: Seven.

14 MR. BUTLER: Thanks. If we could just have a
15 five minute recess.

16 THE COURT: If that strange music keeps playing
17 maybe I'll stay longer.

18 (RECESS.)

19 THE COURT: Okay, we're back on the record at
20 Delphi.

21 MR. BUTLER: Your Honor, we did have an
22 opportunity to meet and confer during the recess, and I'll
23 address that in just a moment. Before you -- I just wanted to
24 ask the Court's permission whether Mr. Naylor can be excused as
25 a witness.

1 THE COURT: Oh, as a witness?

2 MR. BUTLER: Yes.

3 THE COURT: Oh, yes. I had already excuse him.

4 MR. BUTLER: Okay. We just wanted to make sure.

5 He wanted to know if he could leave.

6 THE COURT: Yes. Yes.

7 MR. BUTLER: Okay. Thank you. The -- Your
8 Honor, we had an opportunity to meet and confer with the unions
9 and they estimate their cross, I believe, of the two remaining
10 witnesses is between three and four hours. We'll have some
11 obviously redirect and depending on your -- the Court stamina,
12 maybe we can get the evidentiary record closed today.

13 There still remains in the confirmation hearing
14 obviously oral argument on this aspect of the case and closing
15 arguments on the plan altogether. There is -- there also
16 remains the MDL and rights offering motions to be dealt with,
17 so I think you're probably going over to Tuesday, no matter
18 what we do, which will coincide with our previous schedule,
19 Your Honor, of saying we will be submitting to you proposed
20 confirmation order on Tuesday.

21 THE COURT: Okay.

22 MR. BUTLER: So it looks like that.

23 THE COURT: Are there still objections to the
24 rights offering?

25 MR. BUTLER: We've actually resolved all of

1 them, Your Honor.

2 THE COURT: Okay. All right.

3 MR. BUTLER: So that should be a short hearing.

4 THE COURT: Okay.

5 MR. BUTLER: On that subject. So that's the
6 best estimate we have, Your Honor. The next witness, our
7 eighth witness in support of confirmation is Nick Bubnovich,
8 who is a senior consultant at Watson Wyatt Worldwide and has
9 acted as compensation consultant to the compensation committee
10 at Delphi Corporation.

11 His declaration has been entered into evidence
12 as Exhibit 88 and his deposition has been entered into evidence
13 as Exhibit 265. I'd like now to present Mr. Bubnovich --

14 THE COURT: And he has a supplemental
15 declaration.

16 MR. BUTLER: -- oh, yeah, you're right, and he
17 has a -- you're right, Your Honor. Thank you. He has a
18 supplemental designation -- a supplemental declaration that we
19 marked and has been entered into evidence as 557, Exhibit 557,
20 and Your Honor, we would like to present Mr. Bubnovich for
21 cross examination in any questions by the Court.

22 THE COURT: Okay. Mr. Bubnovich, would you come
23 up, please? Would you please raise your right hand? Do you
24 swear to tell the truth, the whole truth and nothing but the
25 truth, so help you God?

1 THE WITNESS: I do.

2 THE COURT: And for the record, would you spell
3 your name?

4 THE WITNESS: b-u-b-n-o-v-i-c-h.

5 THE COURT: Okay. Thank you.

6 EXAMINATION BY MR. KENNEDY:

7 Q. Now, Mr. Bubnovich, my name is Tom Kennedy. I
8 represent the IUE-CWA. When did you start consulting with
9 Delphi on compensation issues?

10 A. August, 2005.

11 Q. Prior to your working with Delphi was Watson Wyatt
12 the compensation advisor to Delphi?

13 A. Yes.

14 Q. And was Watson Wyatt the compensation advisor to
15 Delphi from the spin off in 1999 through the point that you
16 began doing it?

17 A. No.

18 Q. So when did -- when did Watson Wyatt start then?

19 A. Watson Wyatt's work as advisor to the compensation
20 committee began I think in December, '04.

21 Q. And was it your function as advisor to the
22 compensation committee to help them create a compensation
23 program?

24 A. Yes.

25 Q. And isn't it true that you believe that compensation

1 programs do not have to be consistent with competitive data?

2 A. Yes, I actually do believe that.

3 Q. Now, have you been involved with Chapter 11 programs
4 before?

5 A. Yes.

6 Q. And am I accurate that you believe that a simple
7 truth about Chapter 11 is that everything is negotiable?

8 A. Yes, I did write that and yes, I think that that's
9 virtually self-evident.

10 Q. And did you advise management of Delphi that none of
11 the constituents in this Chapter 11 proceeding are going to be
12 surprised that management has decided it needs a little
13 something special for itself?

14 A. Well, the context of that e-mail --

15 Q. My question, sir, is whether you gave them that
16 advice?

17 A. I gave them that advice in the context of developing
18 the compensation program that's the subject of this hearing.

19 Q. Okay. At some point did management representatives
20 for Delphi advise you that they wanted to make sure that a
21 vested SERP and a vested equity program was part of the Delphi
22 management compensation plan?

23 A. Management made a presentation to the compensation
24 committee on those two topics arguing that that was important,
25 that those would be important pieces of a compensation program

1 going forward.

2 Q. And did you advise Delphi management that what they
3 wanted was not achievable by competitive data?

4 A. Well, in my report, with respect to those two items,
5 I did note that I could not find any data to support those
6 particular positions.

7 Q. That's your report to the compensation committee,
8 correct? You were just referring to now?

9 A. Yes.

10 Q. My question is whether you advised Delphi management
11 directly that what they wanted in terms of the vested SERP and
12 the vested equity programs were not achievable by competitive
13 data?

14 A. Well, when we refer in this context to vested, the
15 reference is really to the sequence of events upon an
16 involuntary termination without cause. Again, the context is
17 if someone is involuntarily terminated without cause after, for
18 example, thirty years of service, and this individual is one or
19 two years short of vesting in his or her SERP, it seemed
20 reasonable, notwithstanding the data, to vest this person in
21 that benefit which he or she may have accrued over, again, 20,
22 30 year period.

23 Q. So you were making a judgment as to what you felt was
24 a reasonable element of a compensation program, not
25 notwithstanding the competitive data that you had developed in

1 connection with that element; correct?

2 A. The judgment was made by the compensation committee.

3 Q. Isn't it a fact that you advised the compensation
4 committee that you regarded it as reasonable, even though it
5 wasn't supported by the competitive data?

6 A. Well, as I sit here today, I would say yes, I believe
7 that that's a reasonable provision.

8 Q. When you were working in 2006, to put a time frame on
9 it, on developing an emergency equity program, did you
10 structure that program with the goal of making sure that the
11 chief operating officer got more than 3.11 times his salary?

12 A. Absolutely not.

13 Q. I'd like -- could we bring up Exhibit 40?

14 THE COURT: Is it to his deposition or --

15 Q. I'm sorry. This would be Exhibit 40 to the Bubnovich
16 declaration, to the Bubnovich deposition, which is Exhibit 265.
17 Would you move to Page 3 of that document?

18 A. Yes. Page 3.

19 Q. They'll bring it up as well. You have Page 3? Could
20 you blow up the middle chunk of text. Right there, yeah. Do
21 you see where in discussing Mr. O'Neil's compensation you make
22 the statement, quote, his median multiple has to be somewhere
23 north of 3.11 times, or x, closed quotes?

24 A. Can I read the entire paragraph first, please?

25 Q. Please. Yeah, please. Go ahead.

1 A. Okay. I read it.

2 Q. All right. Am I accurate that the words you wrote in
3 that e-mail were, quote, his median multiple has to be
4 somewhere north of 3.11 X, closed quotes?

5 A. The context of the e-mail --

6 Q. First, just to be clear, those are the words you
7 wrote, correct?

8 A. I did write those words.

9 Q. Okay. And the -- you then state that, quote, we need
10 to interpolate from the data to arrive at a median and 75th
11 multiple that makes sense for a CEO of 1.5 million, closed
12 quotes?

13 A. Well, among the things I wrote in this paragraph are,
14 I don't know where you are getting the competitive LTI data.
15 What you've got is wrong.

16 Q. Right.

17 A. Okay. Now, what I'm telling them is that the data
18 they are using is -- doesn't make sense. I make reference to
19 the fact that we have our blended LTI data, would provide for
20 an LTI multiple of 3.11 for someone making a million dollars
21 worth of salary. Now, a blended LTI data refers to a mix of
22 the Watson Wyatt Towers Merin and Mercer long term incentive
23 databases.

24 Okay. So if someone making one million dollars in
25 salary is supposed to have an LTI multiple of 3 plus, and at

1 this time, you know, Rodney was still COO and not CEO, I
2 believe I can say that common sense tells us that a CEO making
3 1.5 million dollars would certainly have a greater multiple.

4 Thus the last sentence, read in the context of the e-
5 mail, means that the data with respect to a CEO, has got to be
6 higher than the 3.11 for someone making a million dollars who's
7 not a CEO.

8 Q. But weren't you in fact willing to drive the data as
9 necessary to arrive at the result that you concluded was
10 appropriate?

11 A. There is no way you can interpret this paragraph in
12 that way.

13 Q. Okay. Could we go to the page before that, which is
14 -- I don't see the Bates but, yeah, the page before that and
15 could you blow up the language on the bottom? Well, actually
16 the bottom, yeah. This again is an e-mail from you to a
17 Matthew Pullam; is that correct?

18 A. Yes.

19 Q. And Matthew Pullam I take it is a Watson Wyatt person
20 who works with you on compensation issues?

21 A. No, he has since left the firm.

22 Q. Well, at that time, is it fair to say he worked with
23 you?

24 A. Yes.

25 Q. Okay. And you indicate that, quote, as far as

1 reasonableness goes, the truth is that not everything has to be
2 or is consistent, closed quotes?

3 A. Again, can I read the entire e-mail first?

4 Q. Please. Of course.

5 A. I apologize to the Court for my use of barnyard
6 language. In the context here I was very frustrated with my
7 colleagues in Detroit and I apologize. Okay, I've read it.

8 Q. Okay. I notice that in it you say, quote, maybe it
9 is we did some kind of R square intercept shit and came up with
10 the following multiples, but Rodney's multiple has got to be
11 three plus, and the CEO position even higher, closed quote.
12 Isn't that an example of your arriving at a predetermined
13 conclusion in trying to drive the data to get that?

14 A. No.

15 Q. Okay. Now, is it a function of your role as
16 consultant to the compensation committee to advise Delphi on
17 its bargaining strategy with the unsecured creditor's
18 committee?

19 A. Yes, I provided management with information in
20 connection with the negotiations.

21 Q. Well, in August of 2006, did you advise the company
22 or its agents on the bargaining strategy to use with the UCC
23 over the emergence cash bonus?

24 A. I don't recall specifically now.

25 Q. All right. Could we bring up Exhibit 18 to Mr.

1 Bubnovich's deposition, specifically Page 3. I keep saying
2 deposition. Yeah, deposition is right, Exhibit 264, five
3 maybe. 65. 18, yeah, 18. And could we move to Page 2. I
4 believe -- excuse me, make that Page 3, and could we bring up
5 the bottom language, beginning with good morning? Mr.
6 Bubnovich, first, would you read that entire e-mail and
7 indicate when you sent it and to whom?

8 A. It is an e-mail that I sent to Mr. Butler.

9 Q. Mr. Jack Butler to my left?

10 A. Yes.

11 Q. And you sent that on August 23rd, 2006?

12 A. Yes, I did.

13 Q. And you asked Mr. Butler if, quote, there is any
14 preemptive benefit to reconsidering the design of the emergence
15 cash bonus program before the October hearing, such that the
16 payments are tied to emergence values, closed quotes. What did
17 you mean by, quote, tied to emergence values, closed quotes?

18 A. In my role as advisor to the compensation committee I
19 believe it's incumbent on me to raise a number of different
20 issues and approaches to the design of the compensation
21 programs. At this time, apparently, the expectation must have
22 been that there be a confirmation hearing in October.

23 So I was suggesting whether the emergence cash
24 program should be redesigned so that in some -- should be
25 redesigned in some fashion, one possibility being to make the

1 payment of the cash there under contingent upon some recovery
2 by the creditors or some total enterprise value.

3 Q. And if either of those things were done, it would
4 make the cash bonus program a little more performance oriented,
5 correct?

6 A. Yes.

7 Q. And you also advised Mr. Butler that, quote,
8 alternatively, we could just wait for the UCC to counter with
9 such a design change, closed quote?

10 A. I did write that.

11 Q. And when you drafted this program, did you do it
12 keeping elements in it that were sort of whole cards that you
13 could give up later? Is that how you approached it?

14 A. I don't -- I don't believe so.

15 Q. Well, you're a compensation expert. I assume you've
16 been aware of the idea of having the cash bonus tied to
17 emergence values since the moment you started working on it for
18 Delphi sometime in 2005; correct?

19 A. Well, I'm already on the record as saying that in a
20 Chapter 11 everything is pretty much negotiable.

21 Q. Well, that's certainly true, and I appreciate your
22 underscoring it, but my question is whether you were aware when
23 you started with the emergence program that it could be tied to
24 performance -- or excuse me, to emergence values?

25 A. I don't remember that being considered at the time.

1 I don't remember that being discussed at the compensation
2 committee or any additional discussion about that. Our theory
3 at the time was that it, and still is actually, performance
4 based. The issue simply in these chain of e-mails is do we
5 want to plus up the performance elements.

6 Q. Well, is there some reason you didn't suggest to the
7 compensation committee, in the initial structuring of the
8 program, that they make it performance based by tying the cash
9 to some emergence value?

10 A. No. I didn't do that at the time, and I don't
11 recall, again, as I just mentioned, I don't recall any
12 discussion about that.

13 Q. Did the UCC ever counter with a proposal to redesign
14 the cash bonus program to be tied to emergence values?

15 MR. BUTLER: Objection. Your Honor, the IUE is
16 part of the creditor's committee, and they've been involved in
17 whatever the discussions were in the settlement discussions
18 were between the committee and the company that resulted in the
19 ultimate -- the ultimate outcome of the committee's agreement
20 or Section 7.08, 78. I'm not sure it should be a subject of
21 discussion here in the Court presented by a member of the
22 committee.

23 MR. KENNEDY: Well, I think the -- we're a
24 member of the committee, although how much they tell us, in all
25 candor, is another issue, but the -- I'm not standing and

1 representing what I learned as a committee member. I'm asking
2 this witness what he knows about the interactions between the
3 committee and the company on this point.

4 I think the record -- I believe I know the
5 answer will be that that was not the case, but I think the --

6 THE COURT: You can -- you can ask the question.

7 Q. Do you recall the question?

8 A. No. Could you please repeat it for me?

9 Q. Sure. Did the UCC ever propose that the cash bonus
10 program be tied to emergence values?

11 A. No.

12 Q. From time to time, did you receive pressure from
13 members of Delphi management to change your views on what
14 constituted market compensation?

15 A. No, I think a little background here would provide
16 some perspective.

17 Q. I asked for a yes or no answer, Mr. Bubnovich?

18 A. Executives that are Fortune 50 company like Delphi,
19 didn't get to the top of the heap being passive. Importantly
20 to most of the executives have spent their entire life in the
21 auto industry, and many of whom have been involved in labor
22 negotiations for years and years.

23 They recognize and have learned over time that when
24 you enter into any sort of negotiations and you ask for X you
25 invariably end up with less than X. I trust, too, that the

1 leaders of the UAW probably feel the same way.

2 Now with that as the background --

3 MR. DECHIARA: Objection, Your Honor, lack of
4 foundation as to that piece about the UAW.

5 THE COURT: It's neither here nor there.

6 Go ahead.

7 THE WITNESS: No. With that bit of background
8 one of the concerns that the Delphi management had was that if
9 a median compensation program, or a market compensation
10 program, however it is defined, was presented to the UCC or the
11 other constituents, invariably negotiations would result in
12 reductions to that program. So yes, they were concerned. Did
13 they pressure me into making changes to the report that I
14 thought were outside the data? No. We've already gone over a
15 couple of e-mails where --

16 Q. In fact, we have another one to do. Could we go to
17 Bubnovich deposition, which is 265, Exhibit 13? And to Page 13
18 of that? Mr. Bubnovich, you originally recommended, and I take
19 it you're the author of this report that we have up here?

20 A. Yes.

21 Q. You originally recommended an emergence cash bonus of
22 66.7 million; correct?

23 A. Well, I don't know that recommend is the right word.
24 I had it -- prepared a draft report that had that figure in it.

25 Q. Well, who is who's responsible for generating at the

1 time of this report, the 66.7 million dollar figure?

2 A. Well, I am.

3 Q. Okay. And you didn't regard providing this -- or
4 drafting this report as essentially a recommendation to the
5 compensation committee as to what the emergence bonus plan
6 should be?

7 A. Well, the exhibit is clearly marked draft.

8 Q. Yeah, it is, yeah, but when you were drafting it, was
9 it in your mind that this would be your recommendation to the
10 compensation committee?

11 A. Yeah, subject to whatever input or other feedback I
12 got from people who were reviewing the draft.

13 THE COURT: I'm sorry. What's the date of this?

14 MR. KENNEDY: The date is October 2nd, I think.

15 MR. DECHIARA: '05.

16 Q. '05, yeah.

17 A. It's marked 10/03 draft.

18 Q. 10/03, sorry. It's October 3rd then, and you --
19 calculating the 66 million dollar number, were you approaching
20 that number on the basis of 80 percent of the 2004 LTI figure?

21 A. This figure is based, yes, on 80 percent of the 2004
22 LTI cost data that I was provided.

23 Q. Okay. In fact, the 80 percent of the 2004 LTI result
24 can be computed in two different ways, one by cost and the
25 other by value; is that correct?

1 A. That's correct.

2 Q. And just for the record, what is the difference
3 between those two ideas, doing it by cost or doing it by value?

4 A. Well, value would be the participant's opportunity in
5 this context. Cost would be the pretax cost to the company.

6 Q. Now, did you advise Delphi management and send them
7 this draft on or about October 3rd telling them that you were
8 anticipating an emergence cash bonus of 66.7 million?

9 A. Yes, it was circulated to members of management.

10 Q. Did you receive any feedback from management that the
11 numbers for emergence in the draft report are different than
12 they had anticipated?

13 A. Yes, I did.

14 Q. And did you explain to management that what you had
15 prepared that's on the screen now is a cost calculation?

16 A. Yes, I did.

17 Q. And did you advise the, quote, I believe that we
18 would have a difficult time getting the program approved it was
19 more costly than the historic LTI program, close quotes?

20 A. Could I see the e-mail that --

21 Q. Yes, you may. I'm referring to Exhibit 12 to your
22 deposition transcript, Exhibit 265. And I was specifically
23 referring to language which appears in the middle block, if
24 that could be highlighted. Well, not quite that -- good job.
25 The exhibit reference is 12. Okay, now I hesitate to ask this,

1 but if we could increase the -- no, not that one. Don't,
2 don't. Well, that will be later, but -- okay, right from there
3 down. There you go. Good, good -- okay, that's it. Would you
4 take a minute to read that, Mr. Bubnovich?

5 A. Okay. I've read it. I've read it.

6 Q. Okay. And you saw the language that I identified a
7 moment ago?

8 A. Again, could you point it out to me, please?

9 Q. Sure. I'm referring to the sentence that goes,
10 quote, I believe that we would have a difficult time getting
11 the program approved if was more costly than the historic
12 LTI program, closed quotes?

13 A. To use a literary reference, this e-mail is sort of
14 stream of consciousness.

15 Q. Well, stream of your consciousness, correct?

16 A. Yes.

17 Q. Okay. And then what were you basing the judgment
18 that you thought it would be difficult to get the program
19 approved if it was more costly than the historic LTI program?

20 A. I had some reservations while I was writing that
21 particular paragraph, which in the next paragraph, I
22 subsequently decided weren't that critical to proposing a
23 program that was more costly than the historic cost incurred by
24 the company.

25 Q. Do you know what -- your voice dropped off, by the

1 way, at the end. You said then by Delphi, right? What was the
2 historic cost to Delphi, your understanding of it in October of
3 '06 when you wrote this e-mail?

4 A. Approximately 67 million dollars.

5 Q. And the current -- well, we'll get to that in a
6 minute. All right. You then said, quote, bigger fight on our
7 hands and the competitive benchmarks are not as compelling,
8 closed quotes. When you said bigger fight, were you referring
9 to a bigger fight in the court getting the plan approved?

10 A. Yes, that anticipated that shortly after the Chapter
11 filing there would be, you know, a hearing on this matter.

12 Q. And the competitive benchmarks are not as compelling.
13 Which competitive benchmarks are you referring to that are not
14 as compelling if you move from the cost to a value approach to
15 doing this emergence calculation?

16 A. That I'm not entirely sure what I meant at the time.
17 I don't -- I don't quite recall.

18 Q. Now, if we could take that down, leave the exhibit up
19 and move up the page a little bit, maybe you can be reading the
20 next e-mail from the one in front of you while we do this
21 electronic -- no, keep the page up. That's okay. The second
22 block of type right up there. That's good enough, I think.
23 Now, a Delphi executive wrote back to you that he had a problem
24 with the approach that you used; is that correct, on October
25 6th?

1 A. Yes.

2 Q. And he indicated to you that he had a representation
3 credibility issue based on two senior execs he had recruited;
4 is that correct?

5 A. Yes. That's what his e-mail says.

6 Q. And then your response was, quote, no problem.

7 Consider the number changed. That is why we do and review
8 drafts, closed quotes; is that correct?

9 A. I did write that and I will say that the essence of
10 the e-mail chain is the one paragraph we haven't looked at
11 which is the bottom paragraph of my e-mail at 841.

12 Q. Well, I'm comfortable -- I'm comfortable with the
13 essence of the e-mail, as we've described it. Now, after this
14 e-mail, did you present to the compensation committee a written
15 proposal that the emergence bonus be 66 million dollars?

16 A. That I don't recall. I don't think so.

17 Q. Isn't it a fact that the next document in this chain,
18 because we're now at October 6th, '05, is the October 8th plan
19 that you developed?

20 A. Yes.

21 Q. Okay. And the October 8th plan that you developed
22 has the 89 million dollar number; correct?

23 A. That's correct.

24 Q. And that represents a change to computing the 80
25 percent of the 2004 LTI by value instead of cost?

1 A. That's right. The compensation committee was told
2 that the proposed emergence cash program would be based on the
3 historic opportunities that were afforded to the participants.

4 Q. Did you share this -- these -- this e-mail chain
5 that's up on the screen with the compensation committee before
6 or at the same time you advised them about your recommendation
7 to do the emergence bonus as a function of value?

8 A. No, I don't believe they saw this e-mail chain.

9 Q. And they never saw the original draft at 66 million;
10 correct?

11 A. That I don't know. I would probably say that they
12 did see it. I don't recall specifically, but as a draft, I
13 believe I would have circulated it to the chair of the
14 compensation committee.

15 Q. Did you ever express to the compensation committee
16 your concern that the competitive benchmarks are not as
17 compelling if the emergence cash is computed on value instead
18 of cost?

19 A. I think the compensation committee was always focused
20 on the opportunities and my analysis was something that, in
21 using cost, was something that they probably hadn't considered
22 before because again, you know, what's in front of the
23 compensation committee is generally a list of names and awards
24 and the opportunity.

25 So I think the framework for the compensation

1 committee is always opportunities, as opposed to the cost.

2 Q. I take it that's a no, you did not advise the
3 compensation committee of the -- that the competitive
4 benchmarks are not as compelling in the use of value on the LTI
5 program as opposed to cost?

6 A. I don't specifically recall.

7 Q. One of your primary functions, I take it, with the
8 compensation committee was to assist them in performing
9 benchmarking to compare the Delphi comp program with other
10 companies?

11 A. Yes.

12 Q. At some point did you perform a survey to establish
13 the relative compensation costs for Delphi executives as
14 compared to the other executives in the -- in the United
15 States?

16 A. We did our first analysis of Delphi executive pay in
17 December -- strike that, September, '05.

18 Q. And at some point did you benchmark each of the DSB
19 positions against similar positions in three or four or five
20 different surveys?

21 A. Yes.

22 Q. And these surveys were published reports by human
23 resource consulting firms that Watson Wyatt selected?

24 A. Yes.

25 Q. And survey methodology of that sort is one that is

1 typically used by compensation efforts to benchmark corporate
2 position compensation?

3 A. Yes.

4 Q. And it's a system that you've used before, correct?

5 A. Yes.

6 Q. Now, when you bench marked the DSB members against
7 survey data, you found that each element of their pay was
8 substantially above the survey media?

9 A. Which of the various bench marking exercises are you
10 talking about? What's the time frame here, if you can help me
11 out?

12 Q. I'm talking about a survey process that we discussed
13 in your deposition that was done at the end of 2005 and the
14 beginning of 2006 I believe it is.

15 A. I think -- I think you're referring to end of 2006
16 actually.

17 Q. All right. Well, let's look at the end of 2006 then.

18 A. Okay.

19 Q. So you have that bench marking process firmly in
20 mind?

21 A. Yes.

22 Q. Okay. And then that bench marking process, you
23 compared the DSB members against the survey data that you had
24 regarded as appropriate for that purpose, correct?

25 A. Yes.

1 Q. And in doing that, you determined that each element
2 of the DSB member's pay was substantially above the survey
3 median?

4 A. Yes, I believe we've even looked at a summary of that
5 during Mr. Naylor's deposition.

6 Q. And that was somewhere between 30 and 50 percent
7 above the survey median for each of the elements of the DSB
8 compensation?

9 A. During my deposition that was what I guessed.

10 Q. And am I correct that the bottom DSB positions were
11 86 percent over the median when bench marked against the Watson
12 Wyatt survey data?

13 A. I don't recall. If you have a specific exhibit we
14 could look at it.

15 Q. Okay. I'd like to look at Exhibit 7 from Mr.
16 Bubnovich's deposition. The bottom print, could you bring that
17 up? Do you see the sentence -- well, please read it first and
18 tell me when you're ready.

19 A. Okay. I've read it.

20 Q. All right. Am I correct that the bottom eleven DSB
21 positions, when bench marked against the Watson Wyatt survey
22 data, were 86 percent over the median; is that correct?

23 A. Yes, that's what the chain of e-mails suggests.

24 Q. And if you -- if we go up to the upper e-mail, which
25 is to you from a Tina Shaw, I gather Ms. Shaw is an employee of

1 Watson?

2 A. Yes.

3 Q. And she works with you on compensation matters?

4 A. Yes.

5 Q. And she states for all eleven positions, we did not
6 bench mark to proxy to recap the weighted average of all survey
7 sources, skipping the parenthetical, indicates the market
8 differential is 102 percent. Do you see that?

9 A. Let me read the whole e-mail.

10 Q. Sure. Please do.

11 A. Okay. I've read it.

12 Q. Okay. And that 102 percent is the weighted average
13 of all survey sources. Do you know what survey sources Ms.
14 Shaw was referring to?

15 A. No.

16 Q. All right. Then she says, quote, after singling out
17 WWDS data, it looks like the market differential is 147
18 percent, closed quotes. Do you know what she means by singling
19 out WWDS data?

20 A. I assume she means comparing it specifically or only
21 Watson Wyatt Data Services data.

22 Q. Now, this e-mail was sent in December of 2007,
23 correct?

24 A. Yes.

25 Q. And at some point, was Watson Wyatt required to

1 forward compensation information to the purchasers, or the
2 investors, I guess, to assist them in determining whether to
3 approve the compensation plan?

4 A. Well, the context of these e-mails, though, that is
5 the references to Pearl and Joe, are to the unsecured
6 creditor's committee compensation consultants and not the plan
7 investors, but information was sent to the UCC and its
8 advisors.

9 Q. All right. And isn't it a fact that you and Watson
10 Wyatt decided to exclude the 2006 DSB published survey bench
11 marking data from Appaloosa, and that you did that in order to
12 not let them know what the actual divergence between market and
13 the executive compensation salaries were?

14 A. No.

15 Q. Well, I direct your attention to the third paragraph
16 of the e-mail, which reads, quote, please remember that we
17 decided to exclude the 2006 DSB published survey bench marking
18 from the Surbalooosa (phonetic) report, and for purposes of
19 determining the market, closed quotes. What could she mean by
20 that, other than the fact that Watson made a decision to not
21 let the investors know how far off the DSB folks were from the
22 DSB published survey bench mark?

23 A. I got a little confused in the sentence by the
24 reference to Surbalooosa. It's not really a typo. She didn't
25 mean Appaloosa. Earlier, actually a year before when Surberis

1 (phonetic) was a possible plan investor, shorthand for all the
2 plan investors was Surbalooosa.

3 Q. Yeah, I'm aware of that. So let's substitute the
4 words, quote, the plan investors, closed quote, for Surbalooosa,
5 and if we read it that way --

6 THE COURT: Well, let me just ask you, was this
7 data supplied to Appaloosa or did you exclude this data from
8 what you shared with Appaloosa?

9 THE WITNESS: No. All of the information that
10 we had was sent to Appaloosa in September. I think what she
11 means is --

12 THE COURT: That was my question.

13 THE WITNESS: Okay. Could you please ask the
14 question again?

15 Q. Sure. Isn't it a fact, and the only conclusion one
16 could draw from this e-mail, that the DSB bench marking data,
17 was withheld from Appaloosa in '07 when you were sending them
18 information on the management compensation plan?

19 A. No, it doesn't mean that. Let me --

20 Q. What does it mean?

21 A. It means that in the report, the plan investor
22 report, the bench marking does not include the survey data. As
23 I testified during my deposition, I decided and told the
24 compensation committee so, that I didn't think the survey data
25 was an appropriate match for the Delphi executives.

1 Q. So that was the reason you didn't include it in the
2 information sent to Appaloosa?

3 A. No. You're mischaracterizing what I said. I said I
4 sent Appaloosa, in September of '07, all the information that
5 we had.

6 Q. Well, what was the decision to exclude that she
7 refers to in her e-mail of December 19, 2007?

8 A. She is talking about the plan investor report.
9 Again, in the plan investor report, when we bench mark the DSB
10 executives and we say compared to the market, the market is the
11 proxy data, not the survey data. So I think all she's trying
12 to tell me here is remember this data that now we're going to
13 send to the UCC wasn't the basis for the conclusions that were
14 reached in our report.

15 But again, I sent everybody all of the data that I
16 had, even the materials that I didn't use, or rely on in
17 preparing my report.

18 Q. Let me talk about the peer groups a little bit that
19 you have worked with the compensation committee in assembling?

20 A. Sure.

21 Q. Do you agree with the statement that there is no one
22 right way to do a peer group?

23 A. Yes.

24 Q. In 2006, you assisted the committee in preparing a
25 peer group of 22 companies, correct?

1 A. Yes, I did.

2 Q. And could we bring that up? That's Exhibit 13, I
3 think, to the -- no, it's not. Let's make it nine. I'm sorry.
4 Let's make it Exhibit 9 to the Bubnovich declaration. Yeah,
5 and could you expand it a little. Now, I want to talk about
6 the -- you need to move the right margin over a little bit.
7 I'm actually asking about the last column. There you are.
8 Good. That's fine.

9 Now, under the competitor for talent category, nine
10 of the 22 people in your view did not -- 22 companies did not
11 compete with Delphi for talent, correct?

12 A. Yeah, the box isn't necessarily -- I'm sorry, the
13 column isn't checked with an X. That's true.

14 Q. Okay. The companies that were checked, how many
15 people -- well, let me withdraw that. How did you determine
16 whether a company -- let me give you an example of Dow
17 Chemical, was a competitor for talent with Delphi?

18 A. Management made a presentation to the compensation
19 committee concerning those companies that it viewed as its
20 competitors for talent and identified certain situations where
21 the company had lost executives to one or more of these
22 companies, or where the company had, Delphi that is, had hired
23 or recruited executives from these companies.

24 Q. So would even one example of an executive, either
25 going to or going from Delphi, and one of these companies, be a

1 basis for putting an X in the competitor for talent?

2 A. Yes, that's possible.

3 Q. So for instance, Best Buy, which is the seventh
4 company on the list, it's your understanding that one person
5 was either hired from or lost to a Best Buy?

6 A. I just testified a minute ago that it could be as low
7 as one, yes.

8 Q. And I'm asking you if in that instance, with respect
9 to Best Buy, isn't it a fact that you were advised of only one
10 individual that was either hired from or lost to Best Buy by
11 Delphi?

12 A. I don't remember that.

13 Q. Would you turn to your deposition. Excuse me, yeah
14 your deposition. That is Exhibit 265, and I'm referring to
15 Page 152. Or no, I'll pass on from that. Never mind. At some
16 point the competitor group decreased from the 22 we were
17 looking at a moment ago, to 18 because of the deletion of four
18 of the larger companies that were on the list of 22, correct?

19 A. Yes.

20 Q. And isn't it true that the change from the group of
21 22 to the group of 18, caused the comparative total direct
22 compensation target to go down?

23 A. Yes, but not by a material amount.

24 Q. Okay. And it's my understanding that you define
25 materiality as seven percent?

1 A. When I was asked that question at my deposition I did
2 answer it as seven percent. The actual different between the
3 peer group was three percent.

4 Q. And would that three percent was across the board,
5 meaning for all 540 execs?

6 A. No, no.

7 Q. Or was it just for the DSB --

8 A. Just for the DSB positions that were bench marked
9 against the proxy data.

10 Q. Now, the change in comparator group reduced the
11 appropriate comparison for CEO salary from 1.5 million to 1.2
12 million, correct?

13 A. Yes.

14 Q. And that of course is a drop of 20 percent?

15 A. That is correct.

16 Q. But it's your understanding and view that the drop
17 with respect to the other executives was only three percent?

18 A. Well, the three percent drop was total compensation.
19 You've isolated, you know, one part of one executive's pay,
20 which happened to have a drop of 20 percent, so, yes.

21 Q. So the three percent is the TDC figure, meaning the
22 LTI, the short term and the salary?

23 A. That's correct.

24 Q. Now, in reviewing the comparison between total direct
25 compensation at the comparator companies and Delphi's, for the

1 purposes of the short term compensation element, were you using
2 the target or the actual?

3 A. Originally I was using actual.

4 Q. And at some point you changed the target?

5 A. Yes.

6 Q. When was that?

7 A. Fall of this year. I'm sorry, fall of last year.

8 Q. Are you aware that the AIP payouts for Delphi
9 executives in 2001, 2003, 2004 and 2005 were zero?

10 A. I'm aware that there were several years pre-petition
11 where nothing was paid and other years where there were modest
12 amounts paid, yes.

13 Q. Could we bring up Exhibit 20 to Mr. Bubnovich's
14 deposition, and again we're using Bates numbers. Use Bates
15 20288. I believe that lists the AIP percentages from 1999 to
16 2005. Do you see that, sir?

17 A. Yes, I do.

18 Q. And in '01, '03, '04 and '05 it's zero?

19 A. Yes, it is.

20 Q. Okay. Now, you've also seen the payouts which were
21 for fifty -- more than fifty percent of the executives, 200
22 percent of their target in '06 and '07, correct?

23 A. I thought the 55 percent was for the first six months
24 of '06.

25 Q. You may be right. You may be right. Let's assume

1 then that there were AIP payouts in excess of the targets in
2 '06 and '07. Would you agree with me on that?

3 A. I don't know about the second half of '07. I'll
4 agree with you for '06 and the first six months of '07.

5 Q. Okay. So that in the point of view of individual
6 executives employed at Delphi, they're actually making more
7 money in terms of a W-2 sense, than during the bankruptcy than
8 they had prior to the bankruptcy, correct?

9 A. Well, their performance is much better. That's the
10 difference.

11 Q. They didn't have you helping to set the targets in
12 the prior months either.

13 MR. BUTLER: Objection.

14 THE WITNESS: I didn't set the targets.

15 MR. BUTLER: Your Honor --

16 THE WITNESS: Sorry.

17 Q. How does the management compensation plan reflect the
18 fact that the AIP payouts before the bankruptcy were mostly
19 zero, after the bankruptcy they have been doing swell. What in
20 the management compensation plan, as you've proposed it,
21 reflects that actual difference between having money and not on
22 the AIP front?

23 A. Well, with all due respect, sir, you're confusing the
24 amount that's earned or as this particular page shows, that's
25 not earned, which is based on performance with the

1 opportunities, notwithstanding the fact that nothing was
2 earned in '01, '03, '04 and '05, the executives had
3 opportunities that were essentially the same as those during
4 the Chapter 11 and those proposed post emergence.

5 Q. Yeah, but up until the fall of '06 you were also
6 using actual as in the pie chart for Delphi executives on how
7 well they had been doing, correct?

8 A. No.

9 Q. Well, I believe you just told me that you changed in
10 the fall of 2006, in computing the AIP portion of the pie
11 chart, from actual to target?

12 A. You misunderstand the process. Let me explain it.
13 For Delphi we were using the target opportunity, not the actual
14 pay. When I started the process of preparing the plan investor
15 report, and using proxy data, the only data that was available
16 in the proxies was actual bonuses earned at the peer companies.
17 So I was comparing Delphi target opportunities to peer actual.
18 Later at the end of last year, I changed from target to target
19 because when the SEC changed the executive compensation proxy
20 reporting rules, target information became available in --
21 beginning in March of '07 for the proxies filed beginning in
22 March.

23 Now, again the difference from target to actual to
24 target to target, not material, one percent.

25 Q. Okay. The amount of actual AIP payout then had no

1 impact on the emergence cash program?

2 A. No.

3 Q. So it made no difference for purposes of determining
4 the emergency cash payment whether someone had been at 200 or
5 AIP or zero; is that correct?

6 A. That's correct.

7 Q. Okay. Now, the emergence cash program, as you're
8 presenting it to the Court, or the company is, calls for 87
9 millions dollars in cash to be paid to Delphi executives,
10 correct?

11 A. Yes.

12 Q. And that was the -- or is close to the figure that
13 was proposed in 2005 as well, correct?

14 A. Yes.

15 Q. Now, after the 2005, or even at the time of the 2005
16 KECP motion, you were aware that this emergence cash program
17 was always subject to court approval, correct?

18 A. Yes.

19 Q. And in fact you have discussed with Delphi
20 executives, what if there is no emergence cash program,
21 correct?

22 A. Probably.

23 Q. And you also advised them that after the various
24 approval processes with the committee and so on, they could end
25 up with only a small amount of equity as emergence program. Is

1 that also correct?

2 A. I probably discussed it as a possibility, yes.

3 Q. Now, in structuring the emergence cash program,
4 you've told me that the payout was figured as 80 percent of the
5 cost of the 2004 L-tip, correct?

6 A. No.

7 Q. Of the value, I thought. I believe it's of the value
8 of the --

9 A. The opportunity.

10 Q. Okay, the opportunity. But in any event, the year
11 involved is 2004?

12 A. Yes.

13 Q. And did you select 2004 because it was the most
14 lucrative L-tip year in recent history?

15 A. No.

16 Q. Are you aware that that's a fact, that the 2004 L-tip
17 opportunity was much higher than prior years?

18 A. I don't recall if I knew that.

19 Q. Okay. Well, could we go to Mr. Bubnovich's
20 deposition Exhibit 3, Page 16. First, do you recognize this
21 page as being a page from the key employee compensation program
22 report you prepared dated October 8th, 2005?

23 A. Yes.

24 Q. And this slide tells us that the L-tip cost was 75.2
25 million in 2003?

1 A. Yes, it does.

2 Q. And 91.3 million in 2004?

3 A. Yes.

4 Q. And then 2005, I gather from the asterisks, that one
5 might look at 2005 as a combination of the 49.6 plus the 21
6 reflected in the asterisk?

7 A. Yeah, so it would make it 70, if you wanted to.

8 Q. All right. So of the three years, we had a 70, a 75
9 and a 91, and you selected the 91 as the year in which to
10 measure the emergence cash bonus, correct?

11 A. That is the case. Yes, that's what this one says.

12 Q. Other than the fact that that would result in the
13 highest possible payment to the affected Delphi executives,
14 what other reason would one select the middle year for that?

15 A. I don't know.

16 Q. Okay.

17 A. But I --

18 Q. The number of executives that are going to be
19 participating in the post emergence bonus program is 540; is
20 that correct?

21 A. Yes, that's correct.

22 Q. And isn't it true that most companies cover only a
23 small number of executives for L-tip?

24 A. No, that's not true.

25 Q. Okay. Could we go to Exhibit 13 to Mr. Bubnovich's

1 deposition, which is the --

2 A. Could we go back to Page 16?

3 Q. I'm happy to go back wherever you wish, although
4 let's keep going, and then we'll have an opportunity to fill
5 that in later?

6 A. Okay. Thank you.

7 Q. I'll lose my thought otherwise and I apologize for
8 that if I -- when I was younger, I didn't lose thoughts. I'm
9 looking at Page 16?

10 A. I'm sorry. What exhibit are we on?

11 Q. We're on -- we're on Exhibit 13, which is the October
12 3 draft of what ultimately became the October 8, 2005 Delphi
13 executive compensation program.

14 MR. BUTLER: This is exhibit what again? I'm
15 sorry, Tom.

16 MR. KENNEDY: It's Exhibit 13.

17 THE WITNESS: Okay.

18 MR. KENNEDY: And I'm referring to Page 15.

19 MR. BUTLER: Thank you.

20 Q. That's Page 16. Could we go to -- yeah, there we
21 are. Could you highlight the second bullet? Okay. Now, Mr.
22 Bubnovich, you prepared this draft, correct?

23 A. Yes.

24 Q. And I notice in your second bullet on Page 15 you
25 write the words, quote, most companies have historically

1 covered only a small number of executives, closed quotes,
2 referring in the title to the emergence bonus cash plan. Did
3 you write those words, sir?

4 A. Yes, I did write those words.

5 Q. Okay. Now, in this emergence plan, what performance
6 is required of the executive after the date of emergence, in
7 order to entitle them to the full recovery of their portion of
8 the emergence bonus, cash bonus?

9 A. Emergence cash plans, in my experience, historically
10 were designed to reward those executives who made substantive
11 contributions during the case. Often it was viewed that they
12 were instrumental in expediting the Chapter 11, or perhaps did
13 something that increased the recovery of the creditors.

14 Delphi management on the other hand, believed that a
15 successful emergence was contingent not only on the very
16 highest levels of management, but on the efforts of the entire
17 team. Agreeing with that view, the compensation committee
18 decided to cover a much greater group than historically would
19 be covered by these sorts of programs.

20 Q. All right. I move to strike as non-responsive. I
21 asked you, sir, what amount of performance, what type of
22 performance is going to be required, after the emergence date,
23 of the executives who are entitled to participate in this cash
24 program?

25 A. Well, the design of the program is that the sooner

1 the exit the sooner the payment, but it was always intended, I
2 believe under the program, that contributions would be weighed
3 at the end of the case and adjustments would be made to
4 recognize contributions. And in this particular case, you
5 know, no business disruptions, successful reorganization, given
6 creditor recoveries, sales pipeline, reasonably flow --

7 Q. But Mr. Bubnovich, you've been very forthcoming. Let
8 me apologize for not asking my question clearly. Let me try it
9 again. Isn't it true that after the performance date, there's
10 no -- excuse me, after the emergence date, there's no
11 additional performance required of Delphi executives to be able
12 to participate in the cash bonus plan?

13 A. Okay. I'll answer that as yes.

14 Q. Now, in fact, if an executive leaves Delphi, he is
15 still entitled to get this money, correct?

16 A. Well, any executive who left Delphi during the case
17 would not get any payment.

18 Q. So true. How about executives that leave after the
19 emergence? Are they going to be able to get this payment?

20 A. If the payment is approved, it will be deemed vested
21 and notwithstanding that it will be paid in two tranches, yes,
22 they will be entitled to it.

23 Q. And Delphi is expecting its number of executives to
24 be reduced by approximately 100 as it rolls forward and
25 hopefully is able to sell the divisions it seeks to sell; is

1 that correct?

2 A. I believe that's approximately correct.

3 Q. And those hundred executives that are departing are
4 also being able to take with them in effect the emergence cash
5 bonus payment from Delphi?

6 A. Well, they made contributions during the case.

7 That's why they're able to take it with them.

8 Q. And what about the 115 executives that are employed
9 by non-debtor entities, they're also participating in the
10 emergence cash bonus program, correct?

11 A. Yes, they are. They're part of the team.

12 Q. Now, do you agree with me that it is less common than
13 more common that a company exiting from Chapter 11 will have an
14 emergence cash bonus plan for its executives?

15 A. I think a little bit of background helps here.

16 Q. Excuse me. I appreciate the background, but let me
17 ask the question. Do I need to ask it again, sir? It's a yes
18 or no question. Do you agree that it is less common than more
19 common that a company exiting Chapter 11 will have an emergence
20 cash bonus plan for its executives?

21 A. I believe I testified at my deposition that it is
22 less common.

23 Q. Thank you. And do you know a man by the name of Josh
24 Wilson?

25 A. Yes, I do.

1 Q. Mr. Wilson is the head of compensation practice in
2 Atlanta?

3 A. Yes, he is.

4 Q. And did you send him an e-mail, and I'm referring to
5 Exhibit 6 of your deposition, sir, sometime in December of 2007
6 concerning -- well, let me just get that up. Would you take a
7 minute to review the e-mail? I'm basically looking at Page 2,
8 if we could get to Page 2. If you could bring up the bottom e-
9 mail and tell me when you've read it, sir.

10 A. Okay. I've read it.

11 Q. All right. Now, around December 24th, 2007, you
12 asked Mr. Wilson to look for cash emergence data for large
13 recently emerged or emerging companies, correct?

14 A. Yes.

15 Q. And when you say emerging companies you're referring
16 to companies coming out of Chapter 11?

17 A. Yes. Again, the context of these e-mails was in
18 connection with the report I was preparing for Steve and Rod's
19 emergence bonuses.

20 Q. Okay. These are --

21 A. I was not asking him to look for general emergence
22 bonus covering a wide group of people.

23 Q. Well, let's look at his answer. He goes, quote,
24 unfortunately I have not found a single one of these -- those.
25 I don't know if it's the post 2005 rules or just a general way

1 of the world, but the significant value in most of the exec
2 deals are in the form of equity granted as part of the
3 emergence, closed quotes. You got that response from him, sir?

4 A. No, I think that's a very insightful response because
5 a lot of times what might really be an emergence bonus is built
6 into the post emergence equity award.

7 Q. Okay. So in fact you replied to him later that same
8 day when you said, quote, I am looking for emergence cash
9 bonuses, generally rationalized as rewarding the exec for the
10 job done during the case, closed quotes. Is that what you
11 wrote, sir?

12 A. Yes, that's what I wrote.

13 Q. Okay. And ultimately, if we go to the top of Page 1,
14 Mr. Wilson sent you seven examples, correct?

15 A. As we discussed in my deposition, it's actually only
16 six, but yes, he did give me --

17 Q. Okay. And these examples appear at Page 4 of the e-
18 mail chain, and essentially they identify instances in which
19 one executive got a success or emergence bonus at six different
20 companies, and in one of them two people got it. Is that
21 correct?

22 A. Yeah. Well, actually in W. R. Grace that wasn't an
23 emergence bonus. That's Mr. Festa's (phonetic) retention bonus
24 maybe.

25 Q. Okay. It's called a success or emergence bonus on

1 the chart?

2 A. Right. Now sometimes when you're parsing through
3 many documents that constitute a Chapter 11 case, you know, you
4 don't quite identify or understand exactly what the number
5 might be.

6 Q. So you don't think that particular company, W. R.
7 Grace should be on the list?

8 A. I can tell you for a fact that that is Mr. Festa's
9 retention bonus opportunity, not -- there's still a Chapter 11
10 so there is no emergence bonus yet.

11 Q. All right. So there are five examples then that he
12 was able to find of even one executive in a company getting a
13 cash emergence bonus; is that correct?

14 A. Yes, that was his -- that was all his research found.

15 Q. Now, did you -- in looking at the 88 million dollar
16 aggregate for the cash emergence program, did you look to see
17 whether that is at or above the median for any companies that
18 have recently emerged from bankruptcy?

19 A. Yes, at the time, I did undertake an exercise to try
20 and compare the proposed cost of the emergence program to the
21 proposed cost of various Chapter 11 companies retention
22 programs.

23 Q. Now, isn't it a fact that the 88 million dollar
24 figure is 31 percent above the median when compared to the
25 other companies you were able to find?

1 A. As I testified in my deposition, I considered that at
2 this time a flawed analysis, not proving much, and it was
3 subsequently abandoned, never considered thereafter.

4 Q. okay. Well, let's just look at the analysis. The
5 analysis that was originally done concluded that the cash
6 payment expressed as a percentage of revenues, I think it was,
7 placed Delphi at the 81st percentile; is that correct?

8 A. The analysis that I did does say that, if you choose
9 to value it.

10 Q. Okay. Well -- now the long term incentive plan
11 setting aside eight percent of Delphi --

12 THE COURT: Are you moving off the cash bonuses
13 now?

14 MR. KENNEDY: Yes, I am, Your Honor.

15 THE COURT: I have a couple questions for you,
16 Mr. Bubnovich.

17 MR. KENNEDY: Sure.

18 THE COURT: Did you do any other comparable
19 analysis comparing other Chapter 11 companies to the proposed
20 Delphi cash emergence bonus plan?

21 THE WITNESS: Well, the cash emergence plan is a
22 vehicle adopted by the compensation committee to provide a type
23 of long term incentive opportunity to the participants. Now,
24 some companies, W. R. Grace for example, skin the cat a little
25 bit differently.

1 You know, Grace has got an LTI program that is
2 covered up to 280 participants. Now, if you move all the --

3 THE COURT: Now, I'm going to proceed through my
4 questions, okay?

5 THE WITNESS: Okay.

6 THE COURT: So I want you to -- I'll give you a
7 chance to elaborate, I hope.

8 THE WITNESS: Okay. Thank you.

9 THE COURT: But did you do any analysis, more
10 than anecdotal analysis, a rigorous analysis comparing Delphi's
11 proposed cash exit bonus plan with other Chapter 11 companies?

12 THE WITNESS: As my materials I think make
13 clear, I couldn't do that type of analysis because nobody else
14 that I could find, had a program that was of the scope of
15 Delphi's proposed program covering that many people.

16 THE COURT: Okay. Now, when Mr. Naylor
17 testified as to getting bench mark data from Watson Wyatt with
18 regard to the cash emergence bonus program, was that the data
19 limited to -- was that data limited to the so called merit type
20 emergence bonuses that you referred to earlier?

21 THE WITNESS: Well, if I remember the section of
22 Mr. Naylor's testimony, I thought he was talking simply about
23 the data that I delivered concerning the proposed emergence
24 bonuses for Mr. Miller and Mr. O'Neil.

25 THE COURT: And is that your understanding -- is

100

1 that the data you provided on emergence bonuses?

2 THE WITNESS: Yes.

3 THE COURT: And is it fair to say that that's
4 the data that's up on the screen now?

5 THE WITNESS: No.

6 THE COURT: Okay. But it was as to senior
7 executives, like the top one or two people in the company?

8 THE WITNESS: Yeah. I prepared a separate
9 report that discussed the potential emergence bonuses for the
10 executive chairman of the board of the CEO.

11 THE COURT: And you were comparing their
12 proposed range of bonuses to other similarly situated
13 executives in other Chapter 11 cases?

14 THE WITNESS: I compared -- I did two analyses
15 in the report. The one compared the long term incentive and
16 emergence bonuses paid to executives in other cases. So --

17 THE COURT: No, but --

18 THE WITNESS: -- I mixed -- I mixed the
19 concepts.

20 THE COURT: But when I -- I guess the point I
21 want to understand is when you say two executives, are you
22 talking about the very senior most executives comparable to Mr.
23 O'Neil and Mr. Miller?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: Okay. Did you provide any

1 comparable data with regard to cash emergence bonuses with
2 regard to other types of executives that would be covered by
3 Delphi's plan?

4 THE WITNESS: No. Again, I could find nothing
5 that matched the scope of Delphi's program.

6 THE COURT: Okay. Now, I heard an earlier
7 answer of yours to one of Mr. Kennedy's questions when he was
8 asking you about historically emergence cash bonuses.

9 THE WITNESS: Well, I think the question you're
10 referring to, and I remember it, he asked me about is it true
11 that --

12 THE COURT: No, that's not the one.

13 THE WITNESS: That's not the one? Okay. I'm
14 sorry.

15 THE COURT: He asked you is it true that most
16 companies in Chapter 11 have covered only a small number of
17 executives.

18 THE WITNESS: I believe I answered that as yes.

19 THE COURT: And you said yes. And then you said
20 that it's used to reward people for a job well done.

21 THE WITNESS: Yes.

22 THE COURT: Merit based.

23 THE WITNESS: Yeah.

24 THE COURT: And then I thought I heard you say
25 that that was the rationale for Delphi's proposal.

1 THE WITNESS: Certainly the rationale for some
2 of the adjustments that were made during the case for some of
3 the individuals.

4 THE COURT: But I also understood from both your
5 and Mr. Naylor's testimony that with the exception of Mr.
6 Miller and Mr. O'Neil, the way that the compensation committee
7 arrived at the amount, the aggregate amount of the emergence
8 bonuses, was as a proxy or a surrogate for foregone LTI?

9 THE WITNESS: That is correct, subject to a
10 twenty percent discount from the 2004 levels.

11 THE COURT: Okay. How was that figure -- how
12 was that methodology arrived at?

13 THE WITNESS: Well, Mr. Kennedy was cross
14 examining me about size of the 2004 LTI awards versus --

15 THE COURT: No, how was the methodology arrived
16 at to use that as a basis for calculating emergence bonuses?

17 THE WITNESS: Well, the intent was to provide
18 some sort of equivalent vehicle to provide a long term
19 incentive opportunity during the case. The company wanted, and
20 the compensation committee agreed, everyone should have salary,
21 annual incentive opportunity and some sort of long term
22 incentive opportunity to maintain -- pay at competitive levels.

23 THE COURT: But am I right that -- leave aside
24 the discounting for a second.

25 THE WITNESS: Okay.

1 THE COURT: And I'll ask you why you reached
2 that, but am I right that the long term incentive opportunity
3 was tied only to being around on emergence?

4 THE WITNESS: Yes. Anyone who was able to
5 remain employed during the entire case, would receive the
6 emergence cash bonus, assuming it was approved by the Court.

7 THE COURT: What in the market place of Chapter
8 11 companies is comparable to that?

9 THE WITNESS: I think the comparables would be
10 those companies that provide the long term incentive
11 opportunity.

12 THE COURT: You mean a KESP plan that's approved
13 early in the case?

14 THE WITNESS: Yes. Yeah, it would be some kind
15 of long term incentive opportunity, you know, albeit, and a
16 critical distinction would be, you know, those sorts of cases
17 or those sorts of situations involve a performance element.
18 For example, you known, the Kalpine (phonetic) case, the
19 performance element was tied to TEV. W. R. Grace's LTI is
20 based on e-bit (sic) growth. So, you know, the fair
21 distinction is that, you know, those programs have a direct
22 performance component, and as you just asked me in this case,
23 there is not such a performance component.

24 Anyone who stays until the end of the case would
25 be -- would receive a payment.

1 THE COURT: If you had such a -- well, I guess
2 there was no such program here, but did Watson Wyatt provide
3 the debtors with any analysis of what a comparable amount would
4 be in respect to a comparable program like that?

5 THE WITNESS: I'm not sure I --

6 THE COURT: If Delphi --

7 THE WITNESS: -- understand the questions.

8 THE COURT: -- if Delphi had such a program as
9 the ones you've just described --

10 THE WITNESS: Um-hum.

11 THE COURT: -- did Watson Wyatt undertake an
12 analysis to see what the amount would be if Delphi had adopted
13 a program along the lines of the ones that you described?

14 THE WITNESS: I think the amounts would be
15 similar to a little bit higher.

16 THE COURT: But did --

17 THE WITNESS: To answer your question, it's no.
18 I'm sorry. The answer to your question is no, we did not
19 undertake that analysis.

20 THE COURT: Okay. And do you have such an
21 analysis of bench marks for such long term incentive programs?

22 THE WITNESS: I have knowledge of certain
23 Chapter 11 company's programs.

24 THE COURT: But Watson Wyatt doesn't have a
25 database to that effect?

1 THE WITNESS: No, it does not.

2 THE COURT: Okay. All right.

3 MR. KENNEDY: Just to follow up on this. I want
4 to make sure I understand the significance of Exhibit 14 to
5 your deposition, sir, Page 17. Would you bring that up? Page
6 17.

7 Now -- well, tell me when you're at it, sir.

8 THE WITNESS: Okay. I'm there.

9 Q. The notes refer to a peer group comprised of the
10 following 15 companies with revenues of five billion and above.
11 Who is it that assembled that peer group?

12 A. I did, maintained the database of Chapter 11
13 companies retention programs.

14 Q. And your -- I'm trying to square that with your
15 testimony to the Court a few minutes ago that Watson Wyatt did
16 not maintain a database of companies emerging from Chapter 11?

17 A. Well, I understood the Court's question to be in
18 relation to long term incentive programs. This is what I would
19 call a peer retention program or KERP.

20 Q. So these peer groups essentially that you're
21 referring to had in place KERP?

22 A. Yes.

23 Q. And would it be fair to categorize the emergence cash
24 bonus plan as a back end KERP?

25 A. It's a program that could be looked at in a variety

1 of ways. You know, one could call it -- one could say it has
2 features that are very similar to a retention program.

3 Q. I didn't hear the last part?

4 A. I said it does have features that are similar to
5 retention programs.

6 Q. So you would agree with me that it's in effect a PRP
7 at the back end of the proceeding?

8 A. The design isn't quite the same as your typical KERP,
9 but again, it is paid as his Honor's questions to me pointed
10 out, at the end of the case, if someone is still employed.

11 Q. The -- let's talk a little bit about the long term
12 incentive --

13 THE COURT: Can we just have this for a second?
14 Is this the -- is this the analysis that you said was flawed?

15 THE WITNESS: Well, when the motion was being
16 prepared, the first day motions, I didn't anticipate that my
17 report was going to be attached to those motions. Mr. Butler
18 kind of surprised me the week before, and I was struggling to
19 find some bench marks. And so I came up with this. I don't
20 believe that's it an appropriate comparison now.

21 As I said earlier, nothing ever came of this.
22 This was never discussed subsequently by a compensation
23 committee. I never brought it out. It died on the vine.

24 THE COURT: I'm sorry. What is the date of
25 this?

1 THE WITNESS: October, '05.

2 MR. BUTLER: October 8th, Your Honor.

3 THE COURT: But wasn't it then a -- it was a
4 KERP then? I mean it was a KERP motion? I just don't
5 understand why -- why it's apples and oranges in that context.

6 THE WITNESS: I guess I never viewed it strictly
7 as a KERP.

8 THE COURT: Well, the motion said KERP.

9 THE WITNESS: I don't know.

10 MR. KENNEDY: Your Honor, just so the record is
11 not messed up. I think it was called KECP.

12 THE WITNESS: Yeah.

13 MR. KENNEDY: There's a very interesting initial
14 that's different.

15 THE COURT: Okay. All right.

16 MR. KENNEDY: It's really a KERP.

17 THE COURT: So I'm sorry. The reason it's broad
18 is because it's a comparison of the KECP to KERPs?

19 THE WITNESS: Yes. You know, again the -- if
20 you view the program as the type of LTI vehicle, I think it's
21 more appropriate to compare it to LTI opportunities rather than
22 KERPs.

23 THE COURT: Again, just to make sure I
24 understand, there is no comparative chart for that in a Chapter
25 11 case? There's no comparative chart for other LTI like

1 opportunities?

2 THE WITNESS: Well, in my report I do compare
3 the emergence cash opportunity to long term incentive
4 opportunities.

5 THE COURT: No, but not for Chapter 11 cases?

6 THE WITNESS: That's correct.

7 THE COURT: Your report deals with companies
8 with a stock option, have true opportunity value?

9 THE WITNESS: Yes.

10 THE COURT: During the period in question?

11 THE WITNESS: Yes. Yeah, yes, that's correct.

12 THE COURT: Which you -- well, I would -- okay,
13 fine.

14 MR. KENNEDY: Okay.

15 THE COURT: You can continue.

16 MR. KENNEDY: May I continue, Your Honor?

17 THE COURT: Yes.

18 Q. Did you ever advise Delphi that in your view the
19 documents they had submitted in support of the key-sip motion
20 was not in --

21 THE COURT: Let me just take a break. I want to
22 get a little bit of composure back.

23 (RECESS.)

24 THE COURT: Continue, Mr. Kennedy.

25 MR. KENNEDY: Thank you, Your Honor. I've been

1 encouraged by my colleagues to go more quickly and I will
2 certainly do that.

3 Q. I'd like to ask a couple of questions about the SERP
4 program, Mr. Bubnovich. Do you understand that a SERP is a non
5 qualified pension benefit?

6 A. Yes.

7 Q. And you're aware that this particular SERP, and
8 indeed I believe all SERPs are not funded by the companies
9 involved. Do you agree with that, sir?

10 A. I'm sorry. Ask the question again.

11 Q. They're not pre-funded SERPs. There's no trust and
12 that sort of thing?

13 A. Yes.

14 Q. And they're paid out of general assets, correct?

15 A. Yes.

16 Q. And did you do an analysis of how other companies in
17 Chapter 11 have treated their SERP program?

18 A. Yes, I did.

19 Q. And isn't it true that most often SERPs are lost or
20 substantially impaired during a Chapter 11 process?

21 A. That's particularly true when recoveries are limited
22 or low, yes.

23 Q. Well, in this case the recoveries are going to be
24 whatever the market pays the people who get the Delphi stock,
25 correct?

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1 A. Well, the creditors, as I understand the plan, are to
2 be provided with an amount of stock that is equal to par plus
3 accrued and yes, equity values do fluctuate.

4 Q. Now, the frozen SERP is -- continues to be payable to
5 both actives and retirees, correct?

6 A. Well, the SERP is not payable to actives. It's only
7 payable to the retirees.

8 Q. You're exactly correct. I apologize for that. Am I
9 correct that if post emergence, your current plan is that
10 current retirees will continue to receive a check up to a 5,000
11 cap and actives will get their SERP benefits as they qualify
12 for them?

13 A. No.

14 Q. Okay. How was I wrong?

15 A. Well, the cap is being -- the plan of reorganization
16 provides that the \$5,000 cap is to be eliminated and that the
17 program with respect to retirees is terminated.

18 Q. So that -- I want to make sure I understand this.
19 Existing retirees now, as we sit here, are getting their SERP
20 checks?

21 A. Subject to the cap.

22 Q. Subject to the cap. And is it part of the post
23 emergence plan that those retirees will no longer get a check,
24 or that they'll simply still be subject to the cap?

25 A. No. They will no longer get a check. Instead they

1 will have a claim the same as any other unsecured creditor.

2 Q. Now, Mr. Naylor testified that the cost of lifting
3 the cap to Delphi on a going forward basis will be
4 approximately 42 million dollars. Have you computed the cost
5 of the other changes and benefits that are being enacted as
6 part of the freezing of the SERP?

7 A. No. I didn't compute them, but they were computed,
8 yes, in the aggregate.

9 Q. And in the aggregate, what are those costs?

10 A. 87 million dollars.

11 Q. And is that a present value number?

12 A. Yes.

13 Q. And do you know what the discount rate was used to
14 arrive at it?

15 A. No, I don't. It was calculated by our actuarial
16 group.

17 Q. And does that 87 million dollars include the cost of
18 -- that we have identified sort of colloquially as 42 million
19 for lifting the \$5,000 cap?

20 A. I'm not sure. I'd have to look at the materials.

21 Q. So that the 87 million dollar figure could actually
22 be a portion of this additional SERP cost arising from the --

23 A. I simply don't know without looking at the
24 information.

25 Q. And the 87 million dollars is a charge that Delphi is

1 going to be carrying on its books?

2 A. Yes.

3 Q. And if the SERP were terminated for actives as well
4 as for retirees, would Delphi be freed of that 87 million
5 dollar obligation?

6 A. Yes.

7 Q. Now, are you -- have you done a study of how many
8 companies emerging from Chapter 11 with billions -- with
9 revenues of five billion or above, have amended their SERP to
10 improve its benefits at the time of the freeze?

11 A. I'm sorry, sir. Ask the question again.

12 Q. Sure. It had a lot of elements. I'm trying to
13 figure out what Delphi is doing now in connection with the
14 SERP. Do you know if other companies that have done the same
15 thing have amended a SERP to improve its benefits immediately
16 prior to the freeze in emerging Chapter 11 situation?

17 A. I don't know.

18 Q. Have you looked if there were such examples?

19 A. I did not look. Our actuarial practice was asked to
20 find whatever data that it could on the subject.

21 Q. And isn't it a fact that your actuarial practice got
22 back to you with an e-mail which said, quote, neither of us are
23 aware of a situation where the plan was amended to change the
24 benefit formula immediately prior to the plan freeze, closed
25 quotes?

1 A. Yes, I believe that's true.

2 Q. And who is Keith Williams? Let me ask that?

3 A. Keith Williams is the lead actuary on the Delphi
4 account for Watson Wyatt.

5 Q. And as you're a senior compensation person, I take it
6 he's a senior actuary for Watson?

7 A. Yes.

8 Q. And are you aware that he wrote an e-mail on October
9 4th of 2006 indicating that he told Delphi management that,
10 quote, I was quite uncomfortable with making any changes to the
11 basis SERP design in conjunction with the freeze of the his
12 plan on emergence, closed quotes?

13 A. Yes. He wrote that e-mail in the context of having
14 no knowledge at the time about the subject matter.

15 Q. Well, you have a lot of knowledge about the subject
16 matter, don't you? And you don't have any other examples of
17 companies freezing -- or I should say amending their SERP to
18 improve benefits prior to the freeze either, do you?

19 A. No, I do not have that information for a Chapter 11
20 company.

21 Q. In fact Mr. Williams as a senior pension actuary
22 observed I believe in his October e-mail that, quote, it would
23 not be at all unusual for executives to lose the entire accrued
24 SERP upon emergence, closed quotes. Isn't that true?

25 A. Yes, but again I don't know that he had -- he didn't

1 provide any data to support that.

2 Q. Well, all right, that's his opinion as a senior
3 pension actuary. Do you have data to show that he's wrong?

4 A. No.

5 MR. KENNEDY: I have no further questions, Your
6 Honor.

7 THE COURT: Okay. Thanks. Do you have
8 questions?

9 MR. DECHIARA: I do, Your Honor.

10 THE COURT: Okay.

11 MR. DECHIARA: Your Honor, I know it's late. I
12 will do everything I can not duplicate what Mr. Kennedy has
13 done.

14 THE COURT: Okay.

15 MR. DECHIARA: And so it might take me a few
16 minutes to go through my notes and know which questions to
17 skip.

18 THE COURT: That's fine.

19 MR. DECHIARA: If the Court would please bear
20 with me. Thank you.

21 EXAMINATION BY MR. DECHIARA:

22 Q. Good afternoon, Mr. Bubnovich. I'm Peter Dechiara
23 from Cohen, Weiss and Simon for the United Auto Workers. I
24 would like to ask you to look at what has been marked as Naylor
25 Exhibit 7. And I'd like you in particular -- if you can -- the

1 second page of the document says, Delphi Corporation
2 compensation philosophy and strategy. Are you familiar with
3 this document?

4 A. Yes.

5 Q. Okay. And did you prepare this document?

6 A. Yes. I was the scrivener, if you will.

7 Q. Okay. And when was this prepared?

8 A. It was prepared early 2007. There were numerous
9 drafts.

10 Q. If you would pull up the paragraph, the first bullet
11 point. Right. About half way down in this paragraph with the
12 first bullet point it says -- I'll start with the sentence that
13 says in this regard. It's in the middle of the paragraph. In
14 this regard the committee assesses both total direct
15 compensation, which is the sum of salary plus annual incentive
16 opportunity plus long term incentive opportunity, and total
17 compensation, which includes other aspects of pay, including
18 retirement benefits. Market total direct compensation
19 comparisons for the members of the Delphi strategy board, DSB,
20 are developed from proxy data from a comparable group of large
21 diversified companies, as well as from manufacturing and auto
22 industry survey data. Do you see that?

23 A. Yes.

24 Q. So the as well as means that according to Delphi's
25 compensation philosophy as adopted by the compensation

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1 committee, in determining the market level for the DSB, one
2 should look both at proxy data and at survey data, correct?

3 A. Yes, that's what it says.

4 Q. And in fact, you looked at survey data, and you found
5 that the survey data showed that the DSB members were well
6 above market, correct?

7 A. Yes.

8 Q. And you decided not to put that in your report that
9 had been presented as part of the support for the management
10 compensation program, correct?

11 A. Yes.

12 Q. And in fact for the lower eleven of the 21 DSB
13 members, there was insufficient proxy data, correct?

14 A. From the peer group, yes.

15 Q. So what you did was you, quote, extrapolated from the
16 proxy data for the top half of the DSB, correct?

17 A. That is correct.

18 Q. And what you mean by extrapolated is you simply found
19 that the proxy data showed that the top half of the DSB were at
20 market, so you just assumed that the bottom half were, too; is
21 that a fair characterization of what you did?

22 A. That is a fair characterization.

23 Q. Let me refer you to Paragraph 14 of your declaration.
24 On Page 7, Paragraph 14, there's a reference to Pearl Meyer of
25 Steven Holland Partners. I believe there's been some

1 testimony, but just to make the record clearer, Pearl Meyer was
2 or is the compensation consultant for the creditor's committee?

3 A. Yes.

4 Q. And she's in the same profession that you are,
5 correct?

6 A. Yes.

7 Q. And is she a well respected member of that
8 profession?

9 A. Yes.

10 Q. And are her views generally well regarded?

11 A. Yes.

12 Q. Let me turn you to Paragraph 5 of your supplemental
13 declaration. It's on Page 3 of your supplemental declaration.
14 It's document 557, Joint Exhibit 557. Mr. Bubnovich, you
15 testified just a moment ago that you had using the proxy data,
16 found that the top part of the DSB group were within a
17 competitive range, correct?

18 A. Yes.

19 Q. And the way you reached that result was using a peer
20 group analysis, correct?

21 A. Yes.

22 Q. Okay. In the first sentence of Paragraph 5 of your
23 declaration on Page 3 it says around November, 2007 I met with
24 the compensation consultant for the creditor's committee,
25 that's Pearl Meyer?

1 A. Yes.

2 Q. Who suggested to me that the Delphi peer group for
3 compensation bench marking purposes should be revised so that
4 it solely comprised manufacturing companies, end quote. Do you
5 see that?

6 A. Yes.

7 Q. So that it was Pearl Meyer's view that it was
8 inappropriate to include Coke and Pepsi and Best Buy, and the
9 other non manufacturing companies, that were on the peer group,
10 that led to the proxy analysis, correct?

11 A. I disagree with Pearl's view. I think it's actually
12 quite common for very large companies to use a peer group
13 comprising companies of diverse industries.

14 Q. Well, we don't Pearl Meyer here to testify and I'm
15 certainly not qualified as an expert. I just want to establish
16 that Pearl Meyer disagreed with your view, correct?

17 A. Yes. She is not here. That is correct. Yes, and
18 she did disagree.

19 Q. She did disagree. Thank you. Did Pearl Meyer have
20 any other criticisms of your analysis in support of the
21 management compensation plan?

22 MR. BUTLER: Objection, Your Honor. I think
23 that's improper. It's not -- this is supposed to be a cross
24 examination of the declaration. I'm not sure what Pearl
25 Meyer's report is -- Pearl Meyer is not here. Her report is

1 not here. The committee is not -- the committee has signed off
2 on 708, 78. I mean I just think -- I'm not sure --

3 MR. KENNEDY: Your Honor, I think from our --

4 MR. BUTLER: (indiscernible) our views are.

5 MR. KENNEDY: Your Honor, this is a case where
6 the company is basing virtually its entire case in support of
7 the management compensation plan, based on the view of its
8 compensation --

9 THE COURT: I'm sorry. You don't have to -- you
10 can ask leading questions. If you know, for instance, you
11 should do that.

12 MR. DECHIARA: Okay. I'll stick to leading
13 questions.

14 THE COURT: I don't --

15 MR. DECHIARA: Okay. Fair enough, Your Honor.
16 Thank you.

17 MR. ROSENBERG: Your Honor, if I might, very
18 quickly, the committee did not sign off. The committee agreed
19 not to object.

20 THE COURT: Okay. But anyway --

21 MR. DECHIARA: I'm not asking anything about the
22 creditor's committee. I'm just asking about Pearl Meyer.

23 THE COURT: All right. You can -- again, you
24 can ask leading questions, so --

25 MR. DECHIARA: I'll limit myself to leading

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1 questions.

2 THE COURT: If there's a criticism you know
3 about, you can ask him about it.

4 MR. DECHIARA: Okay. Fair enough. Fair enough,
5 Your Honor.

6 Q. Isn't it true that Pearl Meyer believed that it would
7 have been appropriate in determining the market level of pay of
8 the lower half of the DSB to use the survey data that you did
9 not use?

10 A. Well, I actually don't know if Pearl thought it would
11 be appropriate. Pearl took the data that I sent her and
12 calculated essentially the same numbers that I had calculated
13 and concluded that the lower level DSB members were
14 substantially above the median in the survey.

15 Q. But she based that view that they were above market
16 based on a use of survey data, correct?

17 A. Yes.

18 Q. And she thought it was a flaw in your methodology not
19 to -- not to use the survey data, correct?

20 MR. BUTLER: Objection, Your Honor. We don't
21 know it from our beliefs or not. I don't understand --

22 THE COURT: I sustain.

23 MR. DECHIARA: Your Honor, can I show the
24 witness a document I'm not putting into evidence? I just want
25 to see if it refreshes the witness's recollection?

1 THE COURT: You can do that.

2 MR. DECHIARA: Thank you.

3 Q. I'm showing you a document, Mr. Bubnovich, which I am
4 not going to put into evidence and see if it refreshes your
5 recollection.

6 MR. BUTLER: Objection, Your Honor. I'd like to
7 see the document he's showing the --

8 MR. DECHIARA: (Indiscernible).

9 MR. BUTLER: And I believe it's a document that
10 was withdrawn by --

11 MR. DECHIARA: It is.

12 MR. BUTLER: Your Honor, this is a document that
13 in the meet and confer, the UAW agreed not to put into
14 evidence.

15 MR. DECHIARA: And we're not putting it into
16 evidence.

17 MR. BUTLER: Well, this is the report that was
18 withdrawn by the creditor's committee.

19 MR. DECHIARA: Your Honor, it is a report that
20 was served in this case --

21 THE COURT: What is the question you're asking
22 the witness?

23 MR. DECHIARA: The question was, isn't it true
24 that Pearl Meyer believed that Mr. Bubnovich's methodology was
25 flawed because he chose not to use the survey data for the

1 lower portion of the DSB. The survey data showed that they
2 were well above market.

3 THE COURT: Well, I --

4 MR. BUTLER: Your Honor, the UAW can't use the
5 views of an expert not introduced in this case as a --

6 THE COURT: I'll sustain that objection. But
7 let me -- I'm going to ask a related question. Why, Mr.
8 Bubnovich, do you believe the survey data is flawed?

9 THE WITNESS: The bench marking process and the
10 decision making around it is not a hundred percent science.
11 There's art, if you will, or judgment. The data, for whatever
12 reason, was so far below the actual pay of the DSB members that
13 when I brought this to the attention of the committee, the
14 compensation committee -- I'm sorry -- in early 2007 and told
15 them if this is our bench mark, it means that half the DSB have
16 to have their pay substantially reduced. Now, in one of the e-
17 mails that Mr. Kennedy presented, there's a brief exchange
18 where I mention this and say that is going to produce an absurd
19 result.

20 Now it made no sense to the compensation
21 committee to have to reduce salaries and annual incentive
22 opportunities by 30, 40, 50 percent.

23 THE COURT: Right.

24 THE WITNESS: This was a dilemma --

25 THE COURT: That's the basis for your rationale

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1 that the data was not appropriate.

2 THE WITNESS: Right. I didn't believe that it
3 properly reflected the scope of the positions at --

4 THE COURT: Let me ask you a question. The
5 company took the position both in litigation and in
6 negotiations that the unionized workers had to reduce their
7 wages by approximately two times, fifty percent, based on
8 competitive market data.

9 THE WITNESS: Right.

10 THE COURT: Is it logical, or would it have been
11 logical for the union's expert to have responded by saying
12 that's absurd. That would mean we have to reduce salaries by
13 two times? In other words, aren't you just walking into your
14 criticism of the data by saying that would force us to change
15 the status quo?

16 THE WITNESS: Well, again, I didn't -- as I
17 said, I don't believe, nor did the compensation committee
18 believe that that was the bench mark for the --

19 THE COURT: I understand it creates personnel
20 issues.

21 THE WITNESS: Um-hum.

22 THE COURT: But I'm just focusing on the data.
23 Was there anything wrong with the data, as data, any reason to
24 question it as what the bench mark companies were paying?

25 THE WITNESS: Well, this gets a little complex

1 and please bear with me while I try to explain this. The
2 survey data in effect tries to predict pay based on the various
3 data that's gathered about various positions at different sized
4 companies. So to take a simple and super simplified example,
5 if we find that the pay for a position at a company with
6 revenues of 200 X is ten, and the company with 300 X is
7 fifteen, the data will try to predict what the pay will be for
8 the same position with revenues of ten times that.

9 Now, often the predictions don't work out.
10 There's a statistical approach called regression analysis --

11 THE COURT: Well, let me ask you, was any of
12 that contemplated here when you didn't consider the data?

13 THE WITNESS: Well, I didn't tell the
14 compensation -- I didn't take the compensation committee
15 through the details about regression analysis and all that. It
16 was just, look, this data strikes me as flawed, doesn't seem to
17 properly match up with the Delphi positions.

18 THE COURT: But that's just based on Delphi's
19 own existing position.

20 THE WITNESS: Yes.

21 THE COURT: Okay. All right. I don't think you
22 need to say anything more about this issue.

23 MR. DECHIARA: May I have one question, Your
24 Honor, just one?

25 Q. Moving on to the non DSB, the 540 out of the 560?

1 A. Yes.

2 Q. You used survey data for them, correct?

3 A. Yes. We bench marked 173 peoples' jobs.

4 Q. Thank you. Let's now look at the peer group
5 analysis. The reason you used Pepsi and Coke and others, other
6 companies like that, was because of their revenue size,
7 correct?

8 A. Yes. Revenue size as well as the geography that they
9 have global operations and so the extent of their business
10 operations was similar to Delphi.

11 Q. Well, you didn't check for -- let's just take Pepsi,
12 for example, you didn't check the box for geography. You
13 checked the box for -- would you like to see the document?

14 A. Yes, please.

15 Q. I'm sorry. I'm just trying to expedite things. I'm
16 referring to Exhibit 1 to your declaration, which is your
17 December 28th, 2007 report, and in particular I'm referring to
18 Page 33.

19 THE COURT: Which number is this?

20 MR. DECHIARA: What number --

21 THE COURT: The document?

22 MR. DECHIARA: It's Joint Exhibit 88?

23 THE COURT: Okay. It's on the screen. I can
24 see it now.

25 MR. DECHIARA: Right.

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1 Q. Okay. So my question -- my original question was the
2 reason you used -- let's just focus on Pepsi, even though there
3 are others that are in the same font and same category. The
4 reason you used Pepsi was because of revenue size, correct?

5 A. That's correct.

6 Q. And isn't it true that one could also, in looking at
7 size of a company, for purposes of peer group analysis, not
8 just look at revenue size but also look at market
9 capitalization?

10 A. It's possible, yes.

11 Q. Okay. And do you know what the median market
12 capitalization of Delphi -- I'm sorry, let me just start with
13 Delphi. You know Delphi's market capitalization?

14 A. Well, upon emergence, it's expected to 7.8 billion
15 dollars.

16 Q. Okay. And do you know the market capitalization of
17 the peer group company?

18 A. I don't recall right now.

19 Q. But it would be fair to say that it would be well
20 north of 7.8 billion?

21 A. Yes. This was covered in my deposition, yes.

22 Q. And isn't it true that I believe you testified in
23 your deposition that other -- other compensation analysts at
24 Watson Wyatt, when doing compensation analysis, used market
25 capitalization in addition to revenue size in looking at

1 company size for purposes of compensation, correct?

2 A. I'm not sure I testified to that. What I acknowledge
3 was that our template has market capitalization on it, so we
4 capture that data when we download proxy data. The market data
5 is generally used to make an assessment about the total value
6 owned by a particular executive in relation to the company's
7 market cap, what we call carried interest.

8 Q. But isn't it true that other compensation consultants
9 look at market capitalization when they're looking at firm
10 size, when doing compensation analysis?

11 A. You know, from time to time I do believe that some
12 compensation consultants take it into consideration in
13 selecting a peer company.

14 Q. In 2006 Delphi's EBDA and net income was in the
15 negative billions of dollars, correct?

16 A. Yes.

17 Q. And in 2006 the EBDA and net income of the companies
18 on the peer group was in the positive billions of dollars,
19 correct?

20 A. Yes. None of them were in Chapter 11.

21 Q. Yes, and none of them were in Chapter 11?

22 A. Correct.

23 Q. Can you call up Page 85 of Mr. Bubnovich's
24 deposition? Let me just read the first answer on the top of
25 Page 85. It says, quote, well, again I remember Pearl saying

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1 that, you know, these, many of these companies don't belong in
2 a peer group, end quote. What were you saying there? What was
3 that in reference to?

4 A. Well, again, as we've already discussed, Pearl
5 thought that the peer group should be solely manufacturing
6 companies.

7 MR. DECHIARA: Your Honor, I just have a couple
8 -- I'm winding up. I just have a couple more questions.

9 Q. Since the beginning of the Chapter 11 case Delphi has
10 paid your firm over 12 million dollars?

11 A. That's correct.

12 Q. And only a small fraction of that, about maybe 13
13 percent is for management consultation consulting services; is
14 that correct?

15 A. Yes, they paid it that much. Whether it's a small
16 fraction or not, I don't know.

17 Q. Well, let me refer you to Paragraph 9 of your first
18 declaration.

19 A. I can see the -- okay.

20 Q. Okay. Paragraph 9, the first sentence says, since
21 the inception of these Chapter 11 cases, Watson Wyatt's fees
22 through November, 2007 have amounted to 12 million dollars plus
23 -- I won't read out the whole number -- of that amount, and
24 again, I'll approximate, 1.5 million approximately, or
25 approximately 13 percent was related to Watson Wyatt's work

1 related to executive compensation consulting. Is that true?

2 A. That's exactly correct.

3 Q. Okay. And is it fair to say it's standard for a
4 company like Watson Wyatt, when it had the relationship with a
5 company like Delphi, that that relationship is terminable at
6 will?

7 A. It's certainly true in my case.

8 Q. And it's terminable at will at the will of the Board
9 of Delphi, correct?

10 A. Well, in my case, I was hired by the compensation
11 committee, so they could terminate --

12 Q. I'm not talking about you as an individual. I'm
13 talking about Watson Wyatt.

14 A. Well, yeah, that's right.

15 Q. So Watson Wyatt's relationship with Delphi is
16 terminable at will, by Delphi; correct?

17 A. Well, I've never seen the contract between the
18 actuarial group and Delphi. So I don't know if that's Board
19 level. Most likely is, or if it was signed by management.

20 Q. Okay. Well, let's just take this one step at a time.
21 You haven't seen the contract, correct?

22 A. That's correct.

23 Q. But it's standard practice, in a relationship like
24 this, for it to be terminable at will, correct?

25 A. That's correct.

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1 Q. Okay. And then let's ask the question, it's
2 terminable at will by whom? Is it Delphi's Board or Delphi's
3 management. Do you know the answer to that?

4 A. I don't know the answer to that.

5 Q. Okay. But in either event, whether it's -- if it's
6 the Board, it's a Board that headed by Mr. Miller and Mr.
7 O'Neil, correct?

8 A. Mr. Miller is the executive chair of the Board, yes.

9 Q. Is that the same Mr. Miller who stands to gain 8.3
10 million dollars under this plan?

11 A. Yes.

12 Q. And if it's management, there are a whole lot of
13 management people who stand to gain a whole lot under this
14 plan, correct?

15 A. Yes.

16 Q. What is Irvin or Arvin Meritor?

17 A. Arvin Meritor is a company based in Troy, Michigan
18 that provides parts primarily to the truck industry but also
19 the auto industry.

20 Q. Is it a major auto parts company?

21 A. Yes, I would say yes.

22 Q. And there was a point during the period, the same
23 period that you were doing your work evaluating the
24 compensation that would be paid to Delphi management, where you
25 sought Arvin Meritor as a new client, correct?

1 A. That's correct. They called me and asked me to make
2 a presentation to them.

3 Q. Okay. And you asked Mr. Miller, the executive chair
4 of Delphi, to serve as a reference for you, did you not?

5 A. That's correct. I left a note with his secretary.

6 Q. And he got back to you and said he would serve as a
7 reference, correct?

8 A. His secretary told me that it was okay.

9 Q. Did you have any doubt that his secretary was
10 conveying her boss's sentiments directly?

11 A. Yes. No, I'm not -- I'm not --

12 Q. Okay. So Mr. Miller agreed to be your reference?

13 A. Yes.

14 Q. Okay. Mr. Miller didn't have any obligation to do
15 that, did he?

16 A. No.

17 Q. That was a favor to you?

18 A. As I remember, I think he and the CEO were neighbors,
19 so it made some sense to select him.

20 Q. He agreed to be your reference, did he not?

21 A. Yes.

22 MR. DECHIARA: I have no further questions, Your
23 Honor.

24 THE COURT: Okay. Redirect?

25 MR. BUTLER: Yeah. Your Honor, can we take a

1 five minute recess?

2 THE COURT: That's fine.

3 (RECESS.)

4 THE COURT: Okay.

5 MR. BUTLER: Thank you, Your Honor.

6 EXAMINATION BY MR. BUTLER:

7 Q. Mr. Bubnovich, if you'd look, let's go back to
8 Exhibit 14 to your deposition 265, Page -- first of all, is it
9 correct that this is the report that was filed in connection
10 with the first day paper which was October 8, 2005?

11 A. Yes.

12 Q. And would you go to Page 16 of the report, please?

13 A. I have it.

14 Q. Okay. When you look at the proposed cash cost of the
15 emergence fund, that would be the 87.9 million, correct?

16 A. Yes.

17 Q. Okay. Is that an annualized cost?

18 A. No.

19 Q. Is it an absolute cost?

20 A. Yes.

21 Q. In your own words, if you know it, can you explain
22 how the company arrived at an absolute cost of 87.9 million for
23 this program?

24 A. The company took the opportunities that had been
25 afforded to the participants under the prior LTI programs and

1 just carried those opportunities over into the emergency bonus
2 plan, subject to a twenty percent discount.

3 Q. So was the 87.9 million intended for a twelve month
4 period?

5 A. No. The 87.9 is the entire cost of the program over
6 the case.

7 Q. Well, explain the calc to me, please. If you used
8 2004 LTI, is that 91.3?

9 A. It's the 87.9.

10 Q. Well, explain to me how you calculated 87.9. The
11 91.3 is a twelve month cost; is that correct?

12 A. That's right.

13 Q. Okay. And is the 87.9 a twelve month cost? Are they
14 calculating on twelve months or some other period of time?

15 A. Well, the 87.9 is the total cost estimated at the
16 time of paying emergence cash bonuses over the life of the
17 case.

18 Q. I understand that, but was it based on an estimated
19 duration of the case?

20 A. No. That number is not.

21 Q. All right. So I'm still -- I need you to help me
22 explain how you got to 87.9 because I can't do the walk from
23 91.3 to 87.9, so perhaps you can help?

24 A. The 87.9 represents 80 percent of the 2004
25 opportunities. That became the basis for each participant's

1 award. Then I took that cost and I annualized it, assuming
2 different durations for the Chapter 11 case. So the cost at 18
3 months is annualized at 58.6 million dollars.

4 Q. And based on the actual duration of the case, what's
5 the annualized cost, if you know it?

6 A. Approximately 34 million dollars.

7 Q. So just looking at the chart here, if we were
8 comparing apples to apples, what number should we be comparing
9 against the 49.6 to 91.3 and the 75.2?

10 A. The 34 million.

11 Q. Now again, please, in your own words, could you
12 explain to the Court, if you recall, what the compensation
13 committee asked you to do in designing this incentive payment
14 program?

15 A. The compensation committee asked me to present it
16 with data that -- bench marking the various pay components,
17 primarily total direct comp, to the market so that we could
18 establish what the median was. In addition, I also bench
19 marked other aspects of the proposed program including, for
20 example, the change in control agreements, provided them
21 information about the proposed freeze of the SERP as well the
22 proposed new defined contribution program.

23 Q. I appreciate that, but you designed, I think, from
24 your earlier testimony, you said you were a principle architect
25 of this emergent bonus plan; is that correct? I'm talking

1 about the -- you recall the emergence bonus plan; is that
2 correct?

3 MR. KENNEDY: Your Honor, I believe that's a
4 leading question. This is the direct --

5 THE COURT: No, it's okay. I think it's -- he's
6 just laying a foundation for his question.

7 THE WITNESS: Okay. I'm sorry. Can you ask the
8 question again?

9 Q. I believe you testified earlier -- did you play a
10 role in designing the emergence cash program?

11 A. Yes.

12 Q. Was your role minor or major?

13 A. I would say my role was major as an advisor to the
14 committee and structuring the program, coming up with the
15 various design elements, costing it out, yes.

16 Q. Okay. Focusing just on that program, not on the rest
17 of your assignment?

18 A. Okay.

19 Q. Just on that program, in your own words, can you
20 explain to the Court what, if you recall, what the compensation
21 committee charged you to do in -- and what the goals were of
22 developing this program?

23 A. The compensation committee was interested in
24 providing a vehicle that would provide something similar to the
25 LTI opportunities that had been afforded prior to the case.

1 Obviously once the company had filed for Chapter 11, the use of
2 equity based compensation made no sense. One of the things
3 that the compensation -- I told the compensation committee
4 might make some sense is to design the type of program that
5 would reward the executives for a swift an exit as possible.

6 So under this program the sooner the exit occurred,
7 the sooner they would be paid.

8 Q. So that goes to your point that if they could have
9 engineered a reorganization in fifteen months, that's what this
10 chart means on Page 16?

11 A. That's correct.

12 MR. KENNEDY: Objection. Leading.

13 THE COURT: That's all right. You can answer
14 that question.

15 THE WITNESS: That's correct.

16 Q. Did you formulate the idea of using LTI as that -- as
17 the device against which to measure this performance?

18 A. Yeah. Subsequently it occurred to me that that was
19 an approach given that the emergence cash program was thought
20 of as a form of substitute for a long term incentive program
21 that couldn't be delivered any more on equity based
22 compensation.

23 Q. My question was you testified, I believe, in cross
24 examination that this was for, other than Mr. Miller and Mr.
25 O'Neil, this was a replacement of sorts for LTI; is that

1 correct?

2 A. Yes.

3 Q. My question to you was that design element something
4 that you developed or something that was developed by the
5 company?

6 A. Well, I'm not sure I -- can you perhaps rephrase the
7 question? I'm not quite sure I understand it.

8 Q. Who decided to use LTI, 80 percent of LTI?

9 A. I did.

10 Q. In your own words, would you tell the Court why you
11 chose to do that?

12 A. Well, I thought it was appropriate to have a discount
13 given that we had this what I'll anomaly between the prior
14 years cost and the opportunity. I didn't think it was
15 appropriate to propose a program that was as expensive as -- or
16 that provided the same level of opportunities that existed pre-
17 petition.

18 THE COURT: And that was simply because the
19 company was in bankruptcy or why was that?

20 THE WITNESS: Well, I think because the company
21 was in bankruptcy. I mean to be quite frank, I thought it
22 might make the whole program more palatable.

23 Q. As advisor of the compensation committee, did you
24 have a view at the time as to whether the company wanted to get
25 this program adopted at the beginning or at the end of the

1 case?

2 A. The company wanted it adopted at the beginning of the
3 case.

4 Q. Why was that, if you know?

5 A. Well, I believe the intention was to let everyone
6 know what their opportunities were, to motivate them toward a
7 quick and timely exit. It's kind of a novel approach. Again,
8 you don't see it very often, but it makes some sense.
9 Everybody wants to know what his or her deal is, and if the
10 program had been approved up front, it takes some of the risk
11 away.

12 People understand that, you know, if they work hard
13 through the case, there will be this reward for them at the
14 end.

15 Q. Do you have any personal knowledge of why the company
16 didn't obtain approval of this early -- in the early days of
17 the case?

18 A. I believe it was deferred at the request of the
19 unsecured creditors and also as part of -- because of the
20 negotiations with the union.

21 Q. I'd like to direct your attention now to Page 17 of
22 your report.

23 THE COURT: Is going on to a new topic at this
24 point?

25 MR. BUTLER: It's the same.

1 THE COURT: Same topic?

2 MR. BUTLER: Yeah. I was just trying -- I only
3 have a few more questions, Your Honor.

4 THE COURT: No, I had a question, if you were
5 going to go on to a different topic. That's why I --

6 MR. BUTLER: No, no. Okay. If you want --

7 THE COURT: I'm not hurrying you along.

8 MR. BUTLER: Page 17 of that report. Just the
9 next page.

10 Q. Mr. Bubnovich, at the time that you provided this
11 report to the company and it was filed with the company's first
12 day motions, did you have a professional judgment or view about
13 the appropriateness of this data?

14 A. Yes.

15 Q. What was that view?

16 A. Well, again, I was trying to compare the cost of the
17 proposed emergence plan to data that I had about the cost of,
18 in this case, retention programs. And so I compared the
19 proposed cost of the emergence bonus plan to a group of 15
20 large Chapter 11 companies, that is those that had revenues of
21 5 billion or more, and what this shows is that in Delphi's case
22 its revenue was about in the 79th percentile of those
23 companies, and its cost, as of this proposed program as a
24 percentage of revenues, lined up pretty well.

25 Again, at about the same percentage level. And then

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1 if you look at it in terms of assets, again, you know,
2 reasonably similar than in -- that's Page 17.

3 Q. When you did this calculation, it's based on the
4 annualized analysis?

5 A. Well, I did annualized and aggregate.

6 Q. Okay. When you did annualized, which number on Page
7 16 did you use, for purposes of trying to do the calc?

8 A. The 58.6, which is the 18 months annualized number.

9 Q. And why did you compare an 18 month number to a 12
10 month annualization?

11 A. Well, at that time, I believe the expectation was
12 that the company would be in and out in 18 months.

13 Q. If you had -- if you had used a twelve month number
14 so that it was apples and apples, would those percentages have
15 gone up or down?

16 A. Well, I do have the twelve month -- I do have the
17 twelve month number. The twelve month number would be the
18 aggregate number.

19 Q. Okay. Can you explain that, please?

20 A. Yeah. The last row in the chart on Page 17 is
21 entitled percentage rank, and then Delphi's revenues with
22 respect to the peer group would be in the 79th percentile. And
23 then the annual cost, if you look just at the aggregate, that
24 would be in the 81st percentile. So again, pretty similar, you
25 know, both at or around the 80th percentile.

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1 And then in terms of assets, again, pretty close to a
2 push. Delphi's assets were in the 67th percentile and the
3 entire aggregate cost over a twelve month period would be 71
4 percent.

5 Q. Okay. What does the 81 percent mean? Can you
6 explain the calc behind that 81 percent?

7 A. Sure. It means that when you array the costs of the
8 15 programs, top to bottom, Delphi's costs would be near the
9 top, the 81st percentile, essentially between number 12 and 13,
10 but that's okay because if you also array the company's revenue
11 size, Delphi would be in the same position between number 12
12 and 13. 15 being the largest company or the -- being the
13 largest company in terms of revenue and 15 being the company
14 with the greatest cost in terms of a retention program.

15 MR. BUTLER: Your Honor, that's my only
16 questions on --

17 THE COURT: Okay. Mr. Bubnovich, going back to
18 the approach of proposing a vehicle to replace the former LTI
19 opportunity which was in the form of a stock, you said you
20 chose a 20 percent discount basically to reflect that the
21 company was in bankruptcy and it seemed more palatable. Again,
22 it was 80 percent of what, just so I can be clear in my head.
23 What was it 80 percent of?

24 THE WITNESS: It was 80 percent of the
25 opportunities.

1 THE COURT: But be more -- can you --

2 MR. KENNEDY: I'm sorry, Your Honor. I couldn't
3 hear the witness.

4 THE COURT: 80 percent of opportunities, but
5 could you be more specific on that?

6 THE WITNESS: Okay. Let me try and give an
7 example that I hope would -- it will straight this. Okay, if
8 we start with 100, that was the opportunities at Delphi in
9 2002, 2003. They subsequently decided, management and the
10 compensation committee. Now, at this time I'm not involved.
11 I'm just trying to give you the background.

12 They decided less is more, okay? Now, whereas
13 previously if a stock option or share of stock was worth five
14 dollars, and somebody had an opportunity of a hundred, they
15 would give them 20 shares of stock, cost, pre-tax, \$100.
16 Subsequently because they were getting under pressure, they
17 didn't have as many shares as they needed to affect the
18 program, they adopted what I call the less is more program.

19 So even though the share might be worth five
20 dollars, or the option five dollars, they told people it's
21 worth seven. So they said here's -- we're still giving you a
22 hundred dollar opportunity. That's' what the participants are
23 told, but now they're not getting twenty shares. They're
24 getting sixteen.

25 As a consequence of that, since the shares

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1 really were only worth five dollars, the cost was less than the
2 opportunity. Now --

3 THE COURT: I'm going to ask you the question
4 again. Based on the actual number that you applied the 80
5 percent to --

6 THE WITNESS: Yes.

7 THE COURT: That came up -- doing that
8 calculation comes up with the number that then is fixed for the
9 duration of the case, as I understand it.

10 THE WITNESS: That's correct.

11 THE COURT: So what was the base that you
12 applied the 80 percent to?

13 THE WITNESS: The base was approximately 110
14 million.

15 THE COURT: And how did you derive that 110
16 million dollar figure?

17 THE WITNESS: That 110 million dollar figure was
18 given to me by management as the aggregate opportunities for
19 the executive team.

20 THE COURT: And I guess you have to define that.
21 How did they value the opportunities?

22 THE WITNESS: Using -- the opportunities were
23 valued as the sum of the awards that were given to
24 participants, which varied by level. So think of it as the sum
25 of the value of the restricted stock, long term stock options

1 and cash awards that were given.

2 THE COURT: And the awards that were actually
3 given in a prior year?

4 THE WITNESS: Yes.

5 THE COURT: When you say actually given, do you
6 mean in light of hindsight as to what their actual value turned
7 out to be?

8 THE WITNESS: No, no. It was just the
9 opportunity. So again, the sum of the --

10 THE COURT: So is that number going to be higher
11 or lower than what you would value it in hindsight as to how
12 the stock actually performed?

13 THE WITNESS: Well, that value is much higher.

14 THE COURT: The opportunity is higher?

15 THE WITNESS: The opportunity is higher because,
16 you know, the stock options never went in the money, the
17 restricted stock has no value.

18 THE COURT: So was there any thought of any
19 further discounting under this methodology to reflect the fact
20 that instead of getting stock options, the participants would
21 be getting cash?

22 THE WITNESS: No, other than the twenty percent,
23 no.

24 THE COURT: And why was that?

25 THE WITNESS: I don't recall, but there was no -

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1 - there was no additional discount to reflect the potential
2 difference in that.

3 THE COURT: But let me make sure I understand
4 this. When -- generally speaking when people have an
5 opportunity --

6 THE WITNESS: Yes.

7 THE COURT: -- for example, when they have a
8 warrant, that opportunity can be valued -- you're familiar with
9 the black shoals, right?

10 THE WITNESS: Yes. Yes, I am.

11 THE COURT: When you refer to LTI opportunity
12 here, you're not referring to that type of value?

13 THE WITNESS: Yes, I am.

14 THE COURT: You are?

15 THE WITNESS: Yes, I am.

16 THE COURT: Well, then why is the base that you
17 applied the 80 percent to, I thought you testified that was
18 actually higher than what the amount would be in hindsight.

19 THE WITNESS: Well, I understood your question
20 to be in hindsight the opportunity, the case of the stock
21 option, turned out to be zero.

22 THE COURT: Well, but maybe I'm -- I'm sorry.
23 My question wasn't clear. In 2004 it turned out that there
24 really was value in hindsight, in the stock. You could
25 actually see what the value was?

1 THE WITNESS: That's right. I had a value at
2 the time of the award, but the 2007 award -- I'm sorry, the
3 2004 awards did not vest prior to the filing. No one ever
4 realized any value associated with those awards. At the time
5 of the award, for example, the stock might have had a value of
6 five dollars.

7 That value, which is the opportunity, that value
8 is never realized.

9 THE COURT: Let me ask you this again. The base
10 for the 87 plus million was what again? It was 105?

11 THE WITNESS: 110.

12 THE COURT: 110. How is that 110 derived?

13 THE WITNESS: The 110 is the sum of the various
14 opportunities that were afforded to each participant.

15 THE COURT: Okay.

16 THE WITNESS: Let me try an example.

17 THE COURT: But were those opportunities valued
18 based on the risk of those opportunities bearing fruit or not?
19 Was there a discount to reflect whether the risk would bear
20 fruit or not, and does that 110 million reflect that?

21 THE WITNESS: The answer to that is no.

22 THE COURT: Okay. So there wasn't an equivalent
23 black shoal type of valuation to come up with that 110 million
24 dollar number?

25 THE WITNESS: That's correct.

1 THE COURT: Okay. And given that, since --
2 well, then what was the 110 based on?

3 THE WITNESS: Could I try an example?

4 THE COURT: Okay.

5 THE WITNESS: Okay. We've got a participant who
6 receives restricted stock, stock options and participation in
7 their performance plan, which is cash, okay? Now, if the price
8 of the stock at the time of the award was five dollars, and the
9 person got ten restricted shares, that's fifty dollars. That
10 ten options, with a strike price of five, then there was a
11 black shoals value, or a value ascribed to those options.

12 So let's just assume it was forty percent. So
13 if each option had a value of two dollars, that's two times ten
14 options, twenty dollars, and then if the person had a chance to
15 earn at target, twenty dollars under the cash piece of the
16 plan, the sum of those three numbers, fifty, twenty, twenty,
17 equals 90, it that person's opportunity.

18 Then it was the sum of all the participant's
19 opportunities equal 110.

20 THE COURT: Okay. But it's restricted stock,
21 right?

22 THE WITNESS: Restricted stock was part of the
23 award package, yes.

24 THE COURT: And was there any discount to the
25 fact that it was restricted stock?

1 THE WITNESS: No, because the sole -- the sole
2 vesting criteria were continued service.

3 THE COURT: Okay. And was there any discount in
4 respect to the cash portion?

5 THE WITNESS: No.

6 THE COURT: How big was the cash portion, what
7 percentage?

8 THE WITNESS: The cash portion was thirty
9 percent of the total award for the hundred plus people who
10 received the cash award.

11 THE COURT: And what were the criteria for
12 awarding that?

13 THE WITNESS: Band D and above.

14 THE COURT: No, no, what do they have to do to
15 get it?

16 THE WITNESS: To earn the award the performance
17 criteria were non-GM sales and either return on net assets or
18 maybe it was a cash flow metric. I don't quite remember. It
19 was non-GM sales plus a financial metric that was a return on
20 assets or something else.

21 THE COURT: Okay. And you say that the stock
22 option piece of evaluating the opportunity was valued in light
23 of its optionality as opposed to its face?

24 THE WITNESS: That's correct. It's what's
25 called its fair value versus its face value. It's the same

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1 value that's now used to determine the cost for P&L purposes or
2 for SEC reporting.

3 THE COURT: And so it's those three components
4 and those three ways that made up the base to which you applied
5 a percent?

6 THE WITNESS: Yes.

7 THE COURT: Okay. Was there any rationale for
8 not -- for any -- was there any discussion of any further
9 discount, given the fact that this would be a cash payment?

10 THE WITNESS: No.

11 THE COURT: Okay. Is there a basis? Why
12 wouldn't you further discount it given that this is cash, a
13 hundred percent cash?

14 THE WITNESS: Well, I don't think a discount is
15 -- a discount might very well be appropriate if we were talking
16 about converting the program to all cash for one year only.
17 So, you know, here though, since it was expected that the
18 program would run for at least 18 months, you know, the
19 opportunity is essentially discounted substantially by time.

20 THE COURT: Okay. Thanks.

21 Q. Mr. Bubnovich, you were asked a series of questions
22 on cross examination about peer groups, and you gave a series
23 of answers?

24 A. Yes.

25 Q. Do you recall those questions and answers?

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1 A. Yes, I do.

2 Q. So I'd like to turn to Exhibit 9 to your -- to
3 Exhibit 265, which is your deposition, and we'll blow this up
4 again. Is this the peer group that you recommended in 2006?

5 A. Yes.

6 Q. And who made the recommendation at the bottom to
7 exclude companies from the form of peer comparison?

8 A. I did.

9 Q. Did you do that by yourself or did you consult with
10 the compensation committee?

11 A. Well, I consulted the compensation committee. I mean
12 I think everyone was of one mind that some of those companies
13 didn't belong in the peer group.

14 Q. If you recall, did the compensation committee give
15 you any instructions with respect to the development of the
16 peer group?

17 A. Yes. They told me that they thought there should be
18 no more auto industry companies in there, and so I suggested
19 that we add companies like Borg Warner, Federal Mogul, Parker
20 Hannifin, TRW, Goodyear, to give the peer group a little bit of
21 an industry flavor.

22 They also agreed with me that it was appropriate in
23 Delphi's circumstances, given the size of Delphi, that the
24 program -- or I'm sorry, that the peer group include companies
25 from diversified group of industries.

1 Q. Now, you filed a supplement, and let's keep this up.
2 You filed a supplemental declaration. Are you familiar with
3 it?

4 A. Yes.

5 Q. What was the general purpose of that declaration? Do
6 you recall?

7 A. Yeah. The purpose of that declaration was to address
8 issues that had been raised in the original briefs filed by the
9 IUE and the UAW and to respond to some of the criticism that
10 had been voiced earlier from the UCCs compensation consultant.

11 Q. Did you perform any manufacturing only peer group
12 analyses?

13 A. Yes, I did.

14 Q. And can you explain to the Court in your own words
15 what you did and what those results were?

16 A. Well, originally I constructed a peer group that
17 omitted the non-manufacturing companies and then added six
18 manufacturing companies. My purpose in doing so was to see
19 what extent it changed the results for -- under the existing
20 peer group. So this was what I called my provisional
21 manufacturing peer group versus the existing peer group.

22 And in my mind, the difference were not material, a
23 difference of about five percent. Subsequently I decided that
24 a more detailed analysis of an all manufacturing peer group
25 should be conducted. So beginning on this past Sunday morning,

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1 I had some of the people work for me construct 15 manufacturing
2 peer groups.

3 Now, let me explain the methodology. It's true that
4 a peer group could be sensitive to size as well as one or more
5 particular companies. So we identified 18 companies with the
6 same SIC, standard industry classification code as Delphi. We
7 arrayed the 18 companies, beginning with the largest, which was
8 Caterpillar, number one, all the way down to the smallest,
9 Oshkosh Truck, which was number 18.

10 Now, again, who is to say in a peer group that maybe
11 Whirlpool shouldn't be in there. So then we began to create
12 peer groups taking six companies from each of these, from the
13 list of 18, and added them to the ten manufacturing companies
14 in the current peer group.

15 Now, when we created all 15 peer groups, we got, as
16 you might imagine, a wide range of differences. The range was
17 from plus two percent, meaning that one of the peer groups
18 actually raised the median TDC to minus 15, meaning that that
19 particular peer group produced competitive data that was
20 fifteen percent below the Delphi peer group.

21 But the key thing was there was a cluster of
22 companies at minus two, minus three and minus four. Eight of
23 the peer groups were in that range. Now again, in my view,
24 that's not material and it suggests to me that any peer group
25 that was all manufacturing would not produce a material

1 different in result to the Delphi, the exiting Delphi peer
2 group.

3 Q. Having done that exercise, do you have an opinion as
4 to whether the appropriate peer group is an all manufacturing
5 peer group or a diversified peer group?

6 A. As I said earlier, I believe that it's not all
7 uncommon for large companies to have a diversified peer group.
8 You know, for example, International Paper, they have a peer
9 group that is based on revenue, geography, and competition for
10 talent.

11 You know, if you look closely at the discussion of
12 peer groups that now appears in proxies, you will see a lot of
13 companies saying we are including this company or this range of
14 companies because we believe we compete for talent with them.

15 Not that we've actually lost anybody or are going to
16 hire somebody from those companies. We believe these really
17 are our competitors for talent. Other companies that have a
18 diversified peer group include Kraft, Coca Cola, again, very
19 typical for large companies, Fortune 50, to have diversified
20 peer groups because in their mind the supply of talent is much
21 less than the demand.

22 There simply aren't that many people who can run
23 complex business operations, or have the experience running,
24 you know, large business units.

25 Q. Let's look at, if we can, the peer group that

1 (indiscernible). So it's Page 33 of Exhibit 90. Could you
2 blow this up, please? That's great. The peer group that's
3 here, this is the peer group -- do you have an opinion with
4 respect to this peer group, Mr. Bubnovich?

5 A. Yeah. I think it's a solid peer group.

6 Q. And in your own words, will you tell the Court why
7 you think it's solid peer group?

8 A. Well, again, it includes a diversified group of
9 companies, which I think is appropriate. The background as Mr.
10 Naylor testified was that it became apparent in the summer of
11 '07 that Delphi's revenues going forward, following the sale of
12 interiors and steering, would be more in the low twenty ranges,
13 so we reduced the peer group from a median of 23.6 to 21.1.
14 Then the compensation committee and I talked about which
15 companies do we remove and we decided we would just remove the
16 four largest from the 2006 peer group.

17 Q. Why did you remove those four large companies?

18 A. Well, it brought the median down from 23.6, as I
19 said, to 21, thus matching Delphi's expected revenues. Again,
20 we were trying to make sure that median of the peer group was
21 more consistent with Delphi's projected revenues going forward.

22 Q. I'm going to change subjects, Judge. Anything else
23 you want to --

24 THE COURT: The LTI upon which the cash
25 emergence bonus was based, did you do a peer group analysis for

1 that LTI?

2 THE WITNESS: Okay. Can you -- I want to make
3 sure I understand your question. Could you ask it again,
4 please?

5 THE COURT: Well, for the -- for the management
6 compensation plan, you looked at the peer group to compare
7 various segments of that plan?

8 THE WITNESS: Yes.

9 THE COURT: And my question is a little
10 different than that comparison. The cash awards, cash bonus
11 awards, are based upon 80 percent of the 2004 LTI. Did you do
12 a peer group comparison to determine whether the 2004 LTI was
13 within the median of peer group companies?

14 THE WITNESS: Well, I think if -- let me answer
15 the question this way and you tell me if this is responsive to
16 it. If I were to compare the emergence cash bonuses to the LTI
17 opportunities in this peer group or any other similar peer
18 group, manufacturing, anything, they would be substantially
19 below.

20 The reason for that is since 2004 you had a --

21 THE COURT: No, no. I'm looking at 2000 -- did
22 you do a comparison for 2004?

23 THE WITNESS: Against the peer group?

24 THE COURT: Yes.

25 THE WITNESS: That actually was done.

1 THE COURT: Okay. And was it in the median?

2 THE WITNESS: Yes. It was right about the
3 median, a little bit -- a little bit lower.

4 THE COURT: Does that appear in the exhibits?

5 THE WITNESS: It is -- it appears -- the answer
6 is yes. I don't know which of these exhibits it is, though.

7 THE COURT: Okay. Okay. You can go ahead.

8 Mr. Bubnovich, I want to now turn to and focus on your
9 supplemental declaration at 557. It's Exhibit 557, and I want
10 to go directly to the methodology you chose to utilize in
11 evaluating the DSB executive compensation. In your cross
12 examination and in questions from the Court, you were asked
13 about why you chose not to survey data, with respect to the
14 lower DSB. Is that correct?

15 A. Yes.

16 Q. Do you recall those questions and answers?

17 A. Yes, yes.

18 Q. I guess my first question, do you have a view or can
19 you explain to the Court why there wasn't proxy data for those
20 positions that you could have drawn from?

21 A. Well, a number of those positions, you know, for
22 example, treasurer, senior vice president in HR, weren't
23 reported as top five positions in the Delphi peer group. So I
24 couldn't bench mark, again, those particular positions against
25 the peer group data.

1 Q. And if you recall, and just to illustrate the point,
2 can you explain to the court what positions would be in the
3 lower ten of the DSB that you weren't able to find proxy data
4 for? Do you recall any of the positions?

5 A. Yeah. Treasurer, VP of audit, VP sales and
6 marketing, VP of government relations, communications, EVP of
7 operations. Those were the positions that come to mind right
8 now.

9 Q. Now, what size companies does the survey data cover?

10 A. Well, the survey --

11 Q. The actual data, not the -- just the data? What size
12 companies?

13 A. All sizes.

14 Q. From?

15 A. From, you know, 100 million in revenue, you know, all
16 the way on up but, you know, most of the companies tends to be
17 clustered down at the lower ends because there's more companies
18 that have a billion dollars of revenue or 500 million than 25
19 million.

20 Q. So with respect to this clustered data, if I asked
21 you to tell me about the executive vice president of
22 operations, explain to me how you would construct that and
23 comprise them against the data?

24 A. Well, you know, again, that's a pretty unique
25 position because even though the title is operations, it's

1 really not the business operations and so, you know, it's
2 difficult to find a match for survey, under the surveys for
3 that job. And again, there was no proxy match that we could
4 find anywhere.

5 So again, it's judgment about whether a
6 particular position can be effectively bench marked and that's
7 one that you have to say, well, we can't find an effective
8 bench mark for it, and survey data or proxy data and thus you
9 have to come up with a different approach to bench mark that
10 job.

11 Q. So was there survey data that you could reliably look
12 to for the executive vice president of operations?

13 A. No. In that particular case, no.

14 Q. How about the vice president of government relations?

15 A. Yes. That's a job that can be matched. The same for
16 treasurer, VP audit, yes.

17 Q. And the vice president of sales?

18 A. Yes.

19 Q. Okay. So if I ask you about the vice president of
20 government relations, ask you to give me the survey data, just
21 walk through for all of us how the mechanics work on that? How
22 are you going to report back to me?

23 A. Okay. Well, you go to the various surveys to find a
24 match for the position. We're using position descriptions that
25 were provided us by the company, one paragraph long, that

1 summarize the job. Then you try and match it with a similar
2 position in the survey.

3 So if you find three good matches say in three
4 different surveys, then you compile the data. Now, in
5 compiling the data, we use a regression analysis. You know,
6 most all surveys include formulas that allow you to predict the
7 pay for a position based on the companies revenue.

8 So the data allows -- you know, it's all online now,
9 for you to plug in the revenue for a company. In this case,
10 let's just say Delphi, 25 billion, and then the survey predicts
11 what the pay would be for that position at a company of the
12 inserted revenue.

13 Then it's all totaled, averaged and it's reported
14 generally as the three surveys are average and then reported as
15 generally the 25th percentile, the median, and the 75th.

16 Q. And do you perform these kinds of analyses in the
17 regular course of your job as a consultant for compensation
18 committees generally?

19 A. Yes.

20 Q. And is that, in terms of your professional
21 experience, is that where the analysis ends? You get the
22 number off the computer and you give it to the committee?

23 A. No. No, not at all. As -- you know, one of the
24 things I always tell clients, and I can't remember if it was
25 quoted back to me from an e-mail that I wrote, but you

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1 shouldn't be slaves to the data. The data is merely a starting
2 point. You have to take into consideration a whole lot of
3 other factors, including a person's tenure, performance,
4 experience, you know, all those things can affect a decision
5 about where you pay somebody.

6 Q. And why do you need to look to those other factors?
7 Why isn't it a more black and white analysis?

8 A. Well, it's simply not black and white. It's not a
9 hundred percent science. You know, companies have different
10 strategies, have different approaches. They asses individuals
11 differently. Again, they want to take into account a whole
12 variety of factors, you know, to determine where pay should be
13 set.

14 It's judgmental. It's really -- in operation, it is
15 more judgmental than data driven.

16 Q. When you looked at the survey data, did you believe
17 it was reliable or unreliable with respect to the positions you
18 were evaluating?

19 A. I believe it was unreliable.

20 Q. And as an expert, why do you reach that conclusion?
21 What is the basis for it?

22 A. It was so different from the actual pay, the
23 underlying data when I looked at it did not correlate well in
24 terms of predicting what the pay would be for the positions,
25 and I so informed the compensation committee.

1 Q. But again, the Court asked you questions similar to
2 this. Is this just you waking up as an expert and saying I
3 don't like the data? I mean is that the basis of your
4 conclusion, or is there something else, some other judgment
5 that goes in as an expert?

6 A. Well, it's --

7 MR. KENNEDY: Objection. Leading.

8 MR. DECHIARA: Objection, Your Honor. I'm
9 sorry, you go first, Mr. Kennedy.

10 MR. KENNEDY: Leading.

11 THE COURT: You can answer the question.

12 THE WITNESS: No, it's not waking up and
13 deciding that the data is not appropriate. No, again, I took
14 into account, as I said, the tremendous disparity in the data,
15 the fact that the correlations under the survey didn't seem
16 strong, the fact that I've seen this sort of thing before and
17 have told compensation committees or boards that my faith in
18 the data was not as robust as my faith in the proxy data, which
19 is clearly actual data, actual pay data as opposed to predicted
20 data.

21 Q. Can you explain the difference between actual pay
22 data and predicted data?

23 A. Well, again in the proxy, what you find is the pay
24 that somebody actually received, as well as now detail about
25 the opportunities. Predicted pay, under surveys is

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1 unfortunately a little bit complex and difficult to explain.

2 You know, I'll try. As I said earlier, survey firms
3 such as Watson Wyatt, Towers, Perin, Mercer and all the others
4 collect reams of data about different positions, and it may
5 very well be that for a particular position most of the data
6 collected is for smaller companies.

7 That data is nonetheless used to develop what's
8 called a regression formula which is used to predict pay at
9 different sized companies. So to take a super simplified
10 example, if a HR firm gathered the pay data -- let's just think
11 in terms of salary for fifty positions -- I'm sorry, for fifty
12 different companies for the same position, let's just call it
13 vice president of audit, and all of those companies had
14 revenues of five billion or less, that data is nonetheless
15 converted into a regression formula.

16 Think of it as a line on a page where we've got all
17 these data points down at the lower left hand side. The bottom
18 access, the X access is revenue. The Y access, the left hand
19 side is pay. So a line is produced beyond five billion in
20 revenue, even though we didn't get any -- collect any data from
21 those companies, and used to predict the pay for that same
22 position at a company with revenues more than five billion.

23 So you could predict the pay for somebody at --
24 working that same position at a company with ten billion, 15
25 billion 25 billion, 50 billion revenue. Now, my experience is

1 that those predictions don't quite match up with reality.

2 THE COURT: Now, why doesn't the regression
3 formula take that experience into account?

4 THE WITNESS: I'm sorry. What?

5 THE COURT: Why doesn't the regression formula
6 take that experience that you have and that other consultants
7 who developed the formula into account?

8 THE WITNESS: Well, it can. That's just pure
9 math based on the data that's collected. Now, what the
10 regression formula will do is it will give you a sense of the
11 correlation. It will tell you how strong or weak the
12 correlation is. So, the correlation might be strong at say ten
13 billion, but it might be weak at 25 billion.

14 And again, in looking at the underlying
15 correlation data, it wasn't particularly strong with the survey
16 data. You know, it's --

17 THE COURT: And when did you do that analysis,
18 looking at the underlying --

19 THE WITNESS: Well, that would have been done at
20 the end of 2006, early 2007.

21 THE COURT: That's not described in your
22 affidavit, is it?

23 THE WITNESS: No.

24 THE COURT: Okay.

25 Q. Mr. Bubnovich, in your experience as a compensation

1 consultant, have you ever advised any other compensation
2 committee that they should not rely on this type of survey
3 data?

4 A. Yes. I tend to be a believer in using the proxy data
5 for the top executives. I generally don't believe in using
6 survey data for that group.

7 Q. Did you perform any other examinations or tests to
8 evaluate your -- the opinion you've expressed here today that
9 this survey data was unreliable?

10 A. Yes, I did.

11 Q. Can you tell the Court in your own words what you
12 did?

13 A. As I mentioned earlier, there were a number of
14 positions whose pay was not reported in the Delphi peer group
15 proxy, but I knew having looked at a lot of proxies and through
16 other clients that some of those positions are in fact reported
17 in proxies. For example, senior VP of HR.

18 So what I decided to do was to look for as many
19 examples as I could of proxies that reported these lower level
20 DSB positions. So as it turned out, I found actually -- so I
21 downloaded all companies, revenue range five to 50 billion, and
22 we'll just focus on one example here, that reported the pay for
23 a position that had human resources reported in the top five of
24 the proxy.

25 Now, I got about, as I remember, 40 or 45 matches.

1 So the first thing I did was scrub the data to take out
2 positions that I thought weren't really the top HR. For
3 example, a lot of these positions said, you know, general
4 counsel and head of HR. So I figured that person was more
5 likely the general counsel rather than really head of HR.

6 So I struck all of those. I was finally left with
7 about 25 or 30 positions, senior vice president of HR whose pay
8 was reported in the proxy. Now, the median and 75th percentile
9 size of these companies was much below that of Delphi, yet the
10 pay for these positions was much higher than the survey data.

11 So that confirmed to me that the survey data was not
12 as reliable, didn't reflect the actual pay for these senior
13 level positions.

14 Q. Is this the analysis that you testified to in
15 Paragraph 15 of your declaration that is displayed on the
16 screens?

17 A. Yes, it is.

18 Q. And you base these conclusions on actual data and not
19 predicted data; is that correct?

20 A. That's correct.

21 MR. BUTLER: I have no further questions, Your
22 Honor.

23 MR. KENNEDY: Could we have a minute, Your
24 Honor?

25 (RECESS.)

1 EXAMINATION BY MR. DECHIARA:

2 Q. Mr. Bubnovich, you testified on redirect about
3 something called regression analysis. Do you recall that?

4 A. Yes.

5 Q. And regression analysis is a standard statistical
6 methodology used in your profession?

7 A. Yes.

8 Q. And it's a standard statistical methodology used by
9 economists, if you know?

10 A. I don't know. I don't know.

11 Q. Okay. By physical or social scientists, do you know?

12 A. I don't know.

13 Q. Okay. You used survey data to determine the benchmarking for the non DSB executives. In other words, the group
14 of the 540, correct?

16 A. That's correct.

17 Q. Let me just ask you about Paragraph 15 of your
18 supplemental declaration which you testified about at the end
19 of your redirect examination. Let me see if I understand what
20 you said you did. Generally, for the job titles in the lower
21 half of the DSB, such as VP of HR, there's no proxy data,
22 right?

23 A. There was no proxy data reported for the Delphi peer
24 group.

25 Q. As a general matter, putting aside Delphi, as a

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1 general matter, the job titles, that are the job titles that
2 are in the lower half of the DSB, those job titles are
3 generally reported in the proxy data which is why you had to do
4 your extrapolation exercise; correct?

5 A. No. That's true. They're generally not reported in
6 the proxy data, and except to the extent that I was able to
7 identify some of them from the wide range of companies that I -
8 -

9 Q. Now, once in a while -- once in a while there will be
10 -- there will appear in the -- let me -- the proxy data is the
11 company's reports on the top five paid officers of the company;
12 correct?

13 A. Yes.

14 Q. Okay. So once in a while they'll be a company that
15 will report a job title that is the same job title as the
16 bottom eleven Delphi DSB, once in a while you'll find a proxy
17 data point for one of those people because they will be in the
18 top five of the top five paid positions for that company;
19 correct?

20 A. Yes.

21 Q. Okay. So -- but that's unusual, is it not?

22 A. For some of those positions, yes, because --

23 Q. So when you were looking at the job titles, when you
24 were finding job titles that appear in the lower half of the
25 DSB, and then you were finding proxy data for them and saying

1 oh, this proxy data shows that these individuals are paid more
2 than the survey data shows, you were using those rare instances
3 where one of those people with one of those job titles was in
4 the top five paid of their company; correct?

5 A. Yeah, that's what I said, yes.

6 MR. DECHIARA: Okay. That's all I have, Your
7 Honor.

8 EXAMINATION BY MR. KENNEDY:

9 Q. Mr. Bubnovich, in your redirect examination with Mr.
10 Butler, you indicated that one of the steps you took to create
11 your supplemental declaration was to review the proposed Pearl
12 Meyer group and construct an all manufacturing peer group;
13 correct?

14 A. Yes.

15 Q. And Paragraph 6 of your supplemental declaration,
16 which is Exhibit 30 to the Bubnovich deposition, does that
17 describe the process that you went through to build that all
18 manufacturing peer group?

19 A. Yes.

20 Q. And you essentially took the companies that had been
21 suggested by Ms. Meyer, six of them, and added a seventh; is
22 that correct?

23 A. I took five of hers and added a sixth.

24 Q. Okay. Thank you. And the sixth that you added was
25 selected entirely by you; correct?

1 A. That's correct.

2 Q. And that company was Caterpillar, am I right?

3 A. Yes.

4 Q. And you added Caterpillar to the group to allow you
5 to analyze what an all manufacturing peer group would look
6 like?

7 A. That's correct, and because Caterpillar had been a
8 member in the 2006 peer group.

9 Q. And you knew in fact what the Caterpillar salary
10 terms were at the time you selected them to be put into this
11 all manufacturing peer group; correct?

12 A. No. I could not remember.

13 Q. Well, you had been, or they had been a member of the
14 2006 Delphi 22 company peer group, so isn't it likely at the
15 time you selected them for inclusion, when you made your all
16 manufacturing peer group that you were aware of what their
17 salary ranges were?

18 A. We're talking about a lot of data and a lot of
19 information. I actually did not remember. Now, the context
20 here is really this is why I created the 15 companies to
21 eliminate the effects of one or two companies on a peer group
22 and to get a sense for what the data would look like when you
23 had a wider number of peer groups using many different
24 companies and different revenue sizes.

25 Q. So when you entered Caterpillar to this group, you

1 had no foreknowledge that it would either increase or decrease
2 the likely results; is that correct?

3 A. I did not remember what the information was with
4 respect to Caterpillar. I will concede that since -- certainly
5 given Caterpillar's size, it was definitely more likely than
6 not that that would be a high paying company.

7 Q. Okay. Well, let's bring --

8 A. I can see the point.

9 Q. I'm sorry. Did you finish, sir? I didn't mean to
10 interrupt.

11 A. Yes, I can see the point.

12 Q. But let's bring up Exhibit 32 to Exhibit 265, if you
13 follow me there?

14 A. Um-hum.

15 Q. And make that Page 4, if you could. I think we're on
16 Page 1 at the moment. Could you get to Page 4? I see we are.
17 Would you increase that? Now, this -- are you -- take a moment
18 to look the slide over, Mr. Bubnovich.

19 A. Okay. I have it.

20 Q. All right. Now, this is the slide which shows
21 division president, executive total compensation; correct?

22 A. That's right.

23 Q. And it identifies ten or eleven companies; is that
24 correct?

25 A. Yes.

1 Q. And the company that has the largest number of
2 positions included in the group is Caterpillar; correct?

3 A. That's right.

4 Q. It has seven of the -- I guess six of the entries are
5 Caterpillar, if I read that right? Actually it's five.

6 A. Five. I agree.

7 Q. Okay. And the median for that group is 2.8 million
8 dollars; is that right?

9 A. Sure.

10 Q. And the 75th percentile is 3.1 million dollars?

11 A. Yes.

12 Q. And every single one of the Caterpillar entries is in
13 excess of four million, ranging from 4.2 to 4.89 million?

14 A. That's correct.

15 Q. So is that some kind of lucky break, or did you know
16 that at the time you added Caterpillar to this group, it would
17 have the effect of being essentially 100 percent of the median?

18 A. Well, at the time I did not know, but again, this is
19 why I decided it was more appropriate to construct 15 different
20 peer groups to give myself a better view -- a better sense of
21 the effect on comparison -- the effect in comparing the Delphi
22 peer group to an all manufacturing peer group.

23 Q. And you personally selected the companies to be used
24 in each of those 15 manufacturing -- each of those 15 peer
25 groups?

1 A. No, it was done randomly.

2 Q. Oh, really? No further questions, Your Honor.

3 THE COURT: I had one question. You did a
4 extrapolation from the proxy data for the senior DSB members to
5 get comparables for the junior DSB members?

6 THE WITNESS: Yes.

7 THE COURT: What formula did you apply to do
8 that extrapolation?

9 THE WITNESS: The formula simply was that
10 whatever the amount -- whatever the difference from the market
11 for the ten positions that we could bench mark to, the proxy
12 information, was considered to be the same for the remaining
13 positions.

14 So very simply, if the top ten were below market
15 by five percent, then it was assumed that the bottom ten were
16 below market by five percent. Or if it was plus then, then it
17 was plus ten.

18 THE COURT: And how does that differ from a
19 regression analysis?

20 THE WITNESS: It differs substantially.

21 Regression analysis is a statistical technique. This was --
22 this was judgmental.

23 THE COURT: Is your approach one that's
24 generally followed in your profession, that extrapolation
25 approach?

1 THE WITNESS: That I don't know. I don't know
2 how often, you know, something like that is done. My guess is
3 it's certainly done from time to time. The other thing that
4 sometimes --

5 THE COURT: Is there anything in the literature
6 about it?

7 THE WITNESS: Not that I'm aware of.

8 THE COURT: Okay.

9 THE WITNESS: The other thing that's sometimes
10 done with the data is if it's so desperate with respect to the
11 actual positions, the company might decide instead of using the
12 median, that maybe they ought to be using the 75th percentile,
13 or they'll make some other adjustments to the data to reflect
14 what they believe are differences in the incumbent positions
15 and the survey positions.

16 THE COURT: And that's what the companies do, or
17 is that what the consultants do?

18 THE WITNESS: Well, the consultants would advise
19 them, for example, to adjust the median data by ten or fifteen
20 percent to reflect what our differences between the position
21 description in the survey and the actual job of the incumbent.

22 THE COURT: Okay. Thank you. Any more
23 questions?

24 MR. DECHIARA: None, Your Honor.

25 THE COURT: Okay. You can step down, sir.

1 THE WITNESS: Thank you.

2 MR. KENNEDY: You want to keep going?

3 THE COURT: I don't know. How long do you
4 expect Mr. Miller's testimony to be?

5 MR. BUTLER: Your Honor, my cross examination I
6 think would take ten minutes.

7 MR. DECHIARA: I'd be around that around that
8 order as well, Your Honor.

9 THE COURT: All right. I'll go to eight
10 o'clock.

11 MR. BUTLER: Your Honor, Delphi's ninth and
12 final witness in support of its confirmation case is Robert S.
13 Miller, Jr. Steve Miller is the executive chairman of Delphi
14 Corporation. His declaration has been admitted into evidence
15 as Exhibit 67, subject to a one paragraph that is still at
16 issue with the UAW, and his deposition has been admitted into
17 evidence, Exhibit 551. We would now present Mr. Miller for
18 cross examination by the parties. Any questions the Court
19 might have.

20 THE COURT: Okay. Do you want to deal with the
21 objection?

22 MR. DECHIARA: Yes. Your Honor, may I go to the
23 podium because then I'll just do cross?

24 THE COURT: Okay. That's fine. In the mean
25 time, Mr. Miller, if you could come up and have a seat, please.

1 MR. BUTLER: Mr. Bubnovich is excused?

2 THE COURT: Yes. You're excused Mr. Bubnovich.

3 What paragraph are we talking about?

4 MR. DECHIARA: Your Honor, it's Paragraph 48 of
5 Mr. Miller's declaration. He speaks about and asserts that the
6 union workers' compensation was to be above market in the first
7 sentence, and in the last sentence he again asserts that there
8 had to be a reduction to bring them in line with market
9 compensation.

10 The basis for the objection is foundation. Mr.
11 Miller is not an expert witness. The question of whether or
12 not the union workers' wages were above or below market before
13 or after, or at any other time, is a question that's subject to
14 expert testimony.

15 It was a core issue in the 11/13 proceedings.

16 The UAW had two economists who were prepared to testify --

17 THE COURT: So again, you are objecting to this
18 being admitted for the truth of the proposition but not for
19 what Mr. Miller understood?

20 MR. DECHIARA: Right, Your Honor. Purely I'm
21 objecting based on it coming in for the truth.

22 THE COURT: Okay. That's fine. It will come in
23 only on that basis.

24 MR. DECHIARA: Only not for the truth?

25 THE COURT: Correct.

1 MR. DECHIARA: Yes. Thank you, Your Honor.

2 THE COURT: Well, it will come in for what the -
3 - for what Mr. Miller, and to the extent he's referring to the
4 board understood.

5 MR. DECHIARA: That's fine, Your Honor. Okay.
6 Thank you.

7 THE COURT: Okay. Would you raise your right
8 hand please?

9 THE WITNESS: Sure.

10 THE COURT: Do you swear to tell the truth, the
11 whole truth and nothing but the truth so help you God?

12 THE WITNESS: I so swear.

13 THE COURT: And would you state your name for
14 the record?

15 THE WITNESS: Excuse me. Yes. My name is
16 Robert S. Miller, m-i-l-l-e-r.

17 THE COURT: Okay. You can go ahead Mr.
18 Dechiara.

19 MR. DECHIARA: Thank you.

20 Q. Good evening, Mr. Miller. My name is Peter Dechiara
21 from the law firm of Cohen Weiss and Simon. We represent the
22 UAW in this matter. You're familiar that there were certain
23 comparisons done by Delphi management comparing the all in
24 labor costs of union workers to other workers. Are you
25 familiar with those?

1 A. Yes.

2 Q. And the companies that the other workers -- I'm
3 sorry, the workers at the other companies that were being used
4 for the comparison were all companies in the auto parts
5 industry; correct?

6 A. That is correct.

7 Q. You didn't use Pepsi or Coke or Best Buy, correct?

8 A. No.

9 Q. Okay. And they were all smaller companies; correct?

10 A. Well, given that we were at birth the largest auto
11 parts company, it stands to reason if we compared ourselves to
12 other auto parts companies they would be smaller.

13 Q. Right. So you didn't look at, again, Pepsi or Best
14 Buy which by any measure are bigger companies than Delphi;
15 correct?

16 A. That is correct. When we go to sell products, we
17 sell against the other auto parts companies, not against Coke
18 and Pepsi.

19 Q. And therefore looking at other companies for
20 compensation purposes, looking at other companies in the auto
21 parts industry, makes sense; correct?

22 A. For the hourly workers against whom we have to
23 calculate our costs in making a bid for new business, it is
24 critical to be competitive with other hourly worker situations,
25 and that is what the comparison was based on.

1 Q. Okay. So when you look at hourly worker compensation
2 comparisons you just look at the auto parts industry, but with
3 the executives you do something else; is that right?

4 THE COURT: It's not going to be ten minutes if
5 you keep going like you're doing.

6 MR. DECHIARA: I apologize, Your Honor. It's
7 hard to resist the temptation.

8 THE WITNESS: Yeah, you are correct.

9 Q. Okay. You were paid a signing bonus of three million
10 dollars at the outset of this case when you joined Delphi?

11 A. Yes, to replace other streams of income I had to give
12 up to come there.

13 Q. And you would stand to gain 8.3 million dollars in
14 cash if this court approves the management compensation plan?

15 A. That is correct.

16 Q. So you stand to have earned 11.3 million dollars in
17 cash since you signed on to Delphi if the court approves the
18 management compensation plan?

19 A. You left out I earned three quarters of a million
20 dollars, which was six months of my annual rate of salary until
21 I waived that January 1st, 2006.

22 Q. Okay, so it's 11.3 million --

23 A. Slightly --

24 Q. -- plus three quarters of a million?

25 A. Yes.

1 Q. Okay. When you signed on for -- at Delphi, did you
2 have an expectation that at the end of the case you would get a
3 cash emergence award of 8.3 million dollars?

4 A. When I signed on, I had no expectation that we were
5 going to have to go into Chapter 11 to resolve our issues. I
6 spent three months trying to get General Motors and the unions
7 to work with me to resolve our issues without having to go
8 through this very expensive Chapter 11 process. That was not
9 to be. So I can say I had no expectation that I would be
10 eligible for an emergence bonus because I had no expectation we
11 were going to go in.

12 Q. And after the company did go into Chapter 11, did you
13 at that time form an expectation that at the end of the Chapter
14 11 you would get an 8.3 million dollar cash payment at
15 emergence?

16 A. Well, if you mind, let me give just a brief history -
17 -

18 Q. I do mind. I'd like you to answer my question. Did
19 you have an expectation --

20 A. I had no expectation. What I did was to trust --

21 Q. You answered my question.

22 A. -- the Board of Directors at the end of the case,
23 would make an appropriate decision. I had no participation in
24 the discussions that led up to their decision.

25 Q. Did you rely in any way to your detriment on the

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1 expectation that you would get 8.3 million dollars?

2 A. I relied on an expectation that come the end of the
3 case, more than two years, I guess, after our filing, that the
4 Board would take action, it deemed appropriate and fair.

5 Q. While you've been -- while this case has been in
6 Chapter 11, you've sat on the board of United Airline?

7 A. Yes, sir.

8 Q. Have you been compensated for that?

9 A. Yes, sir.

10 Q. How much?

11 A. I honestly forget because we've gone through a
12 Chapter 11 case there, but I was -- it was an ordinary retainer
13 kind of arrangement and I've got, I forget, 10,000 shares of
14 stock we're awarded at the time of emergence.

15 Q. Well, to be best -- to the best of your ability, if
16 you can give me just an order of magnitude of the value that
17 you've been paid by United Airlines while you've been working
18 here at Delphi?

19 A. \$100,000 a year.

20 Q. And you've sat on the board of Symantec?

21 A. Symantec.

22 Q. Symantec, and same questions. Order of magnitude,
23 how much value have you gotten from Symantec?

24 A. Well, in a way it's been --

25 THE COURT: This is --

1 THE WITNESS: Sorry.

2 THE COURT: -- I'm not quite sure where you're
3 going with this.

4 MR. DECHIARA: I'll move on, Your Honor.

5 THE COURT: Other than the fact that --

6 THE WITNESS: Thank you.

7 THE COURT: Mr. Miller's --

8 Q. During this Chapter 11 case, during which you stand
9 to earn over 11.3 million dollars, you've also found the time
10 to write a book?

11 A. That is true. And I should explain that the book was
12 written over a period from mid '06 until the first quarter of
13 '07. I had a collaborator so I didn't have to do any of the
14 hard work. The collaborator I met with about once every three
15 or four weeks on Saturdays and Sundays only, and at times when
16 there wasn't otherwise a Delphi business reason to be working.

17 Q. And the book, it's called Turnaround Kid, What I
18 Learned Rescuing America's Most Troubled Companies?

19 A. Yes.

20 Q. And have you -- is it fair to say that you have had
21 considerable earnings over the years rescuing America's most
22 troubled companies?

23 A. I don't know what the definition of considerable is.

24 Q. Have you earned millions and millions of dollars?

25 A. Several million dollars.

1 Q. And is it also not true that given that you are the
2 turnaround kid, that you will have no problem finding gainful
3 employment after you leave Delphi, if you choose to do so?

4 A. I would guess that the phone will ring again.

5 MR. DECHIARA: I have no further questions, Your
6 Honor.

7 THE COURT: Okay.

8 EXAMINATION BY MR. KENNEDY:

9 Q. Good evening, Mr. Miller. My name is Tom Kennedy. I
10 represent the IUE-CWA. You stand to receive under the plan 8.3
11 million dollars; is that correct, Mr. Miller?

12 A. That's correct.

13 Q. Are you prepared to take that 8.3 million dollars in
14 stock in Delphi at planned value?

15 A. I have not participated in any discussions with the
16 compensation committee about the currency or the nature of the
17 fee. Emergence cash is cash. This was a recommendation the
18 committee made to the Board. I have decided I would accept it
19 in cash. I haven't thought about whether I would take planned
20 currency.

21 Q. All the same to you, stock and plan value, or cash?

22 A. No.

23 Q. No economic difference?

24 A. I would have a preference for cash.

25 Q. So would the creditors, but anyway, no other

1 questions, Your Honor.

2 THE COURT: Okay. Any redirect?

3 MR. BUTLER: No redirect, Your Honor.

4 THE COURT: Okay. Go ahead.

5 THE WITNESS: Could I answer a question you
6 didn't ask?

7 THE COURT: Well, you may want to look at your
8 lawyer for that.

9 MR. BUTLER: No.

10 THE WITNESS: All right. Okay.

11 THE COURT: See, that's why he's the turn around
12 kid. He listens to his lawyer.

13 MR. BUTLER: All right. Just one moment,
14 please?

15 THE COURT: Yes.

16 MR. BUTLER: I just want to check with my
17 colleagues, Your Honor. I thought I might try -- I believe all
18 of the evidentiary objections have been now been resolved. All
19 the exhibits are in based on the Court's rulings, and we have
20 presented all of our witnesses. So from the debtor's
21 perspective, as to the confirmation hearing, as -- confirmation
22 portion, and not the rights off on other matters, we would
23 consider the record closed.

24 I'm not aware of anyone else who intends to put
25 any evidence into the record.

1 THE COURT: Okay. Is that right?

2 MR. DECHIARA: Yes, Your Honor. The UAW has no
3 witnesses.

4 THE COURT: Okay.

5 MR. KENNEDY: Same for the IUE.

6 THE COURT: Okay. Then the record of the
7 confirmation hearing is closed. And that means that at ten on
8 Tuesday, I'll hear a brief closing argument on the two limited
9 objections.

10 MR. BUTLER: Thank you, Your Honor. And then
11 we'll --

12 THE COURT: Then we'll proceed to the -- well,
13 to a ruling. I'll give you a ruling that morning, and then
14 we'll proceed to the MDL settlement and the registration rights
15 motion. I don't think there's anything else.

16 MR. BUTLER: No, those were the remaining
17 matters, Your Honor. We'll have obviously subject to whatever
18 Your Honor's rulings are on Tuesday. We will be planning to
19 submit the order that day.

20 THE COURT: That's fine. If you could submit it
21 -- I'm not saying for you to drive yourself crazy over this, or
22 drive everyone else crazy. If you could submit it in the
23 morning, you know, at eight or so, that would be fine, but if
24 not, whenever you get to it.

25 MR. BUTLER: That's going to be our goal, Your

1 Honor.

2 THE COURT: Okay.

3 MR. BUTLER: Thank you very much.

4 THE COURT: Okay. Thank you.

5 MR. KENNEDY: Your Honor, could I ask a
6 clarification on something?

7 THE COURT: Excuse me. If you could just let
8 Mr. Kennedy speak.

9 MR. KENNEDY: Just so I didn't misunderstand
10 something, the order that's to be submitted Tuesday morning is
11 after Your Honor's ruling; correct.

12 THE COURT: No, as is often the case, and is the
13 case here, plan proponents will submit a draft confirmation
14 order, a proposed confirmation order in connection with the
15 confirmation hearing, in the case the Court has any issues with
16 it, assuming that the Court's going to grant confirmation.

17 And there's one that's been submitted. I've
18 been told it's going to be updated. I certainly wouldn't enter
19 it unless I decide to confirm the plan. But it's perfectly
20 appropriate to submit a draft order.

21 MR. KENNEDY: Should we submit a counter order?

22 THE COURT: No.

23 MR. KENNEDY: Okay.

24 THE COURT: No.

25 MR. KENNEDY: Thank you.

1 THE COURT: I'm looking at provisions that don't
2 have anything to do with the IUE.

3 MR. KENNEDY: Okay.

4 THE COURT: UAW objection. There are other --
5 there are other changes to the confirmation order that Mr.
6 Butler has alluded to dealing with various settlements and
7 other things, and that's what I would look at.

8 MR. KENNEDY: Thank you, Your Honor.

9 THE COURT: I expect that any ruling on the --
10 on your two objections will be dealt with separately.

11 MR. KENNEDY: Thank you.

12 MR. DECHIARA: Your Honor, should we expect that
13 the debtor will circulate whatever revisions to the order?

14 MR. KENNEDY: To whoever you provided it to
15 before.

16 MR. BUTLER: Yes, Your Honor. Thank you.

17 MR. KENNEDY: I'm assuming it's to incorporate
18 things that people have agreed upon.

19 MR. BUTLER: Yes, that's correct, Your Honor.
20 Thank you, Judge.

21 (Whereupon the afternoon session was concluded at
22 7:53 p.m.)

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DEBTORS'	DESCRIPTION	ID.	EVID.
556	Notice of Delphi Corp. Debtor		11, 17
	Subsidiaries under 1129(a)(5)		
557	Supplemental declaration of Nick		11, 17
	Bubnovich		
558	Final stipulation in MDL case		11, 17

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2 C E R T I F I C A T I O N

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4 I Lisa Bar-Leib, court-approved transcriber, certify that the
5 foregoing is a correct transcript from the official electronic
6 sound recording of the proceedings in the above-entitled
7 matter.

8

9 January 23, 2008

10 Signature of Transcriber

Date

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12 Lisa Bar-Leib

13 typed or printed name

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